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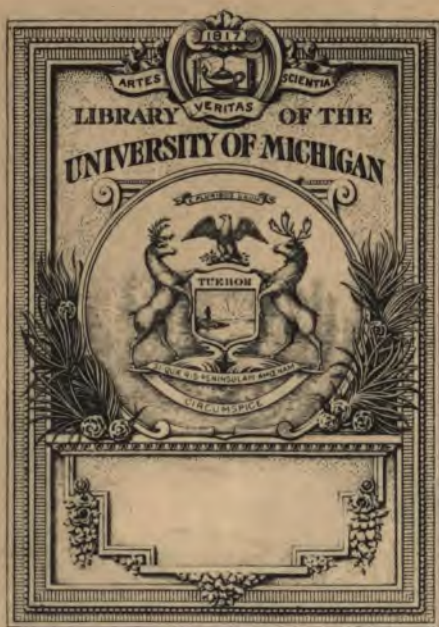
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# **The Citizen's Handbook**

## **Pennsylvania Edition**



**Rupert S. Holland**  
**Robert D. Jenks**



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# THE CITIZEN'S HANDBOOK

(PENNSYLVANIA EDITION)

By  
RUPERT S. HOLLAND AND ROBERT D. JENKS  
of the  
Philadelphia Bar



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## Preface

*Recl. 11-25-29 T.E.N.*  
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The Citizen's Handbook is designed to serve as a brief work of reference to which one may turn for information on the many business, legal or political relations of the day. It is in no sense to be regarded as an exposition of the law, nor, on the other hand, as an elaborate explanation of our system of government.

There are certain questions which confront the citizen many times within a single year, and to which he can find no ready answer. He has not time to delve through the countless pages of a text-book, nor to hunt through the statutes for an answer. That answer, it is our hope, he will be able to find clearly stated here.

How often the question is asked, What does "voting on age" mean, and how shall I go about it? What is a building association? How does one have a check certified, and what does it mean? How does an endowment policy differ from other life insurance? What is guaranteed stock? These are a few of the hundred similar questions one hears about him every day. It would seem that there should be some

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brief book to which to turn and find the answer, some book that would keep its place on the desk, on the reading table, that would slip in the pocket, that would be of service whenever information about public questions was desired.

It cannot be too clearly impressed upon the reader that this book is not intended to cover all the law, nor even half of it on any subject treated. In no sense is it a legal treatise. It is only an outline and an explanation of the use of terms in a given subject that is attempted, a summary of the essential points. And on some subjects it is felt that even a summary should not be attempted, lest the delicate points, known only to the professional man, should be misunderstood if briefly stated. Thus, the subject of the drawing of wills and the broad scope of negligence have necessarily been omitted.

It should be further stated that although this book is intended for general use, yet it is designed primarily for citizens of Pennsylvania, and the subjects have been treated from that standpoint.

The purpose of this book would then seem to be plain. It can answer many of the questions every citizen asks of "someone else;" it can make clear phrases and relations of every-

day life, and the duties and privileges incident thereto. It was the knowledge derived from their own actual experience that such a handbook was needed that has led the authors to present the present volume to the public.



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# Chapter I

## CITIZENSHIP

The government of the United States was, at the time of the adoption of the Constitution by the thirteen original states, unique among nations. The political system of our country is exceptional in that it is composed of separate and distinct governments within an all embracing national government. That is to say, that there exist within the United States separate governments of the several states and a government of the United States, each distinct from the other, and each having citizens of its own, who owe it allegiance, and whom it must protect. A person may be a citizen of the United States without being a citizen of any particular state, since it is only necessary that he should have been born or naturalized within the United States to be a citizen of the National Government, but he must have resided within a certain state, if he is to be regarded as a citizen thereof. It is impossible, however, that

one should be a citizen of one of the states of the Union without being a citizen of the United States also.

**Acquisition.** Citizenship may, broadly speaking, be acquired either by "birth" within the United States, or by "naturalization." In order to be a citizen by reason of "birth," a person must not only be born within the territorial limits of the country, but must also be born subject to its jurisdiction, that is, owing obedience to it. Thus, a child born to foreigners while visiting this country would not be a citizen, because it would not be subject to the jurisdiction of the country in that it would not owe the nation allegiance. Indians, born members of any tribe within the country which still keeps its tribal relations, are not citizens, but they may become such by residing apart from the tribe and adopting the habits and customs of civilized life.

The other manner in which citizenship is secured is by "naturalization." This is technically the act of adopting a foreigner and bestowing upon him all the rights and privileges of citizenship. The power to naturalize foreign subjects is vested exclusively in the National Congress, and cannot be exercised

independently by any of the states. The most that a state can do is to grant to a foreigner the right to hold land within the state, or to participate in the state government. It cannot grant the privileges of citizenship in the nation.

**Who May Become Citizens.** With very few exceptions any foreigner may become a citizen of the United States. Mongolians, or persons belonging to the Chinese race, and foreigners who are the citizens or subjects of a country with which the United States may happen to be at war at the time, are not entitled to be naturalized.

**Courts Which May Naturalize.** Congress has provided that any United States Circuit or District Court, or any State Court of Record, which means in Pennsylvania any court other than that of a Magistrate or Justice of the Peace, may receive, examine and pass upon the application of any foreigner to become a citizen.

**Application for Citizenship.** The applicant for admission to citizenship must first declare his intention to become a citizen. This declaration must be made before any of the proper

courts, or before the clerks of such courts, and must be made upon oath at least two years before his actual admission to citizenship. The declaration must state that it is the applicant's bona fide intention to become a citizen, and to renounce his allegiance to any prince, potentate or state, of which at the time he may be a subject or citizen. This declaration must be recorded. Aliens who are minors and have resided in the United States three years next preceding their coming of age, and who make application for citizenship after having lived in the country for five years, may be admitted without this preliminary declaration. So also may foreigners of full age who have been honorably discharged from the military service of the United States, and seamen who have served on board of a United States merchant vessel, and can produce a certificate of discharge and of good conduct. So also the widow and children of a foreigner, who has declared his intention of becoming a citizen, but has died before he has actually been naturalized, may become citizens immediately upon taking the oath of allegiance.

At the time of his actual application the foreigner must declare on oath that he will support the Constitution of the United States.

He must then prove that he has resided within the country at least five years, and within the state or territory in which he applies at least one year, and that during that time he has behaved as a man of good moral character. Should the Court grant his application a record thereof is duly filed.

**Children.** Children who are born out of the limits or jurisdiction of the United States, whose fathers at the time of their birth were citizens, are citizens by right of birth, and likewise the infant children of aliens, though born out of this country, if living within this country at the time of the naturalization of their parents become citizens by such naturalization.

**Women.** Any woman who marries a citizen, and who might herself lawfully be naturalized, is deemed to be a citizen, without making a special application.

**Expatriation.** Citizenship is lost by expatriation, which is the voluntary renunciation of one nationality and allegiance by becoming a citizen of another country. A woman who marries a foreigner, and resides abroad is regarded as expatriating herself, and thereby ceases to be a citizen of this country.

**Transfer of Residence.** A citizen may transfer his residence from one state to another at his own will, and wherever there has been an actual removal with intent to make a new permanent residence, he will be considered by law as a citizen only of the state to which he has removed.

## Chapter II

### NATIONAL, STATE AND CITY GOVERNMENTS

**The President.** The Constitution of the United States provides that no person except a natural born citizen, or one who was a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President; nor shall any one be eligible to that office who is not, at least, thirty-five years of age, and who has not been a resident of the United States for, at least, fourteen years. The Presidential term is four years and begins on the fourth day of March next following the election. Whenever a President is to be elected, each State in the Union chooses by vote of its citizens a number of Presidential electors, the number being equal to the whole number of Senators and Representatives to which the State is entitled in Congress. Thus, Pennsylvania is entitled to thirty-four. These electors compose what is usually called the

Electoral College, and it is they, and not the people, who vote directly for the President. Originally the electors met in their respective States on a day set by Congress, and voted for two persons for President. The candidate who received the greatest number of votes in the whole Electoral College, provided that such number was a majority of the College, became President, and the candidate receiving the second greatest number of votes, became Vice-President. If there were two candidates, each of whom had a majority, and each received an equal number of votes, then the House of Representatives, each State casting one vote, immediately elected one of the two candidates by ballot. If no person received a majority of the votes of the electors, then the House of Representatives, in the same manner, elected the President from the five highest candidates on the list.

Only three elections conducted under this original provision of the Constitution were needed to show the grave flaws it contained. The electors might be unanimously in favor of one man for President, and of another for Vice-President, and yet by casting one ballot for each of these two candidates, they would actually bring about a tie vote for President,

inasmuch as there was no way of distinguishing between votes cast for President and those cast for Vice-President. This condition of affairs actually occurred in 1800, when Thomas Jefferson and Aaron Burr received the same number of votes in the Electoral College. The people had wished Jefferson as President, and Burr as Vice-President, but the electors had no way in which to distinguish between the offices in their ballots. The result was that the election passed to the House of Representatives, which after a long and bitter fight, elected Jefferson as President and Burr as Vice-President.

In order to prevent such a difficulty arising again the Constitution was amended in 1804, so that the electors should distinctly name in their ballots one person for President, and another for Vice-President. The candidate who received the greatest number of votes for President, if the number received were a majority of the electoral votes, should be President, and the candidate receiving the greatest number of votes for Vice-President, if it were a majority, should be Vice-President. If, in either case, no one received a majority of the votes cast, the House of Representatives, voting by States, should choose the President from the candi-

dates who received the three highest number of votes for President, and the Vice-President from the two candidates who received the highest number of ballots for Vice-President. No person who is ineligible to be President is eligible to be Vice-President of the United States.

In case of the removal from office of the President, or of his death, resignation, or inability to discharge the duties of his office, the Vice-President succeeds to the office of President, and Congress has provided that should the Vice-President be likewise removed the Presidential succession shall be as follows:

Secretary of State.

Secretary of the Treasury.

Secretary of War.

Attorney General.

Postmaster General.

Secretary of the Navy.

Secretary of the Interior.

**The Congress.** The National Congress is composed of two Houses, the Senate and the House of Representatives. The Senate is made up of two Senators from each State, chosen by the respective legislatures, for terms of six years. A Senator must be, at least, thirty years old, and must be, at the time of his election,

an inhabitant of the State from which he is elected. The Vice-President of the United States is the President of the Senate, but has no vote, unless the Senators are equally divided. The Senate elects a President pro tempore to act in the Vice-President's absence. The Senate has the sole power to try all impeachments of Federal officers, and its concurrence is necessary to all treaties made by the President, or appointments made by him of ambassadors, foreign ministers, consuls, justices of the Supreme Court, and certain other officers.

The House of Representatives is composed of members elected directly by the people of the several States for terms of two years. A Representative must be, at least, twenty-five years of age, have been a citizen of the United States for at least seven years, and be an inhabitant of the State which elects him at the time of his election. The House of Representatives elects its presiding officer or Speaker from its own number. This House has the sole power of impeaching Federal officials. All bills for raising revenue must originate in the House of Representatives. Both Houses of Congress must assemble at least once in every year, and, unless they specifically appoint a different day,

they meet on the first Monday in each December. Congress may be summoned in extra session by the President at any time, or either House may be called separately, if necessary.

**Powers of Congress.** In general the powers of Congress are to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the country; to borrow money on the credit of the United States; to regulate commerce with foreign nations, and among the States and Indian tribes; to establish uniform naturalization and bankruptcy laws; to coin money and regulate its value, and to provide for the punishment of counterfeiting; to establish post offices and post roads; to issue patents and copyrights; to organize courts inferior to the Supreme Court; to punish crimes committed on the high seas; to declare war; to raise and support an army and navy, and regulate such military forces; to call out the militia; to legislate for the District of Columbia; and to make all laws which are necessary and proper to carry the above powers into effect.

**The Governor.** The Governor is the chief executive officer of Pennsylvania. He is elected directly by the people and holds his office for

four years. He is not eligible to re-election for the next succeeding term. A Lieutenant Governor is chosen at the same time, and in case of the Governor's resignation, or removal from office in any manner, succeeds him. The Lieutenant Governor is the President of the State Senate. No one is eligible to become Governor or Lieutenant Governor except a citizen of the country, who is, at least, thirty years of age, and has been an inhabitant of the State for at least seven years next preceding his election; and no one who holds any office under the National or State Government may at the same time be Governor or Lieutenant Governor.

**The Legislature.** The State legislative power is vested in the General Assembly, which consists of the Senate and House of Representatives. Both Senators and Representatives are elected directly by the people, the former being elected for four years and the latter for two years. Senators must be at least twenty-five years of age and Representatives at least twenty-one. They must have been citizens and inhabitants of the State for at least four years, and have lived in their respective districts for at least one year before

their election. The same restriction as to holding any civil office under the National or State Governments applies to Senators and Representatives as to the Governor. The Senate elects a President pro tempore to preside over it in the absence of the Lieutenant Governor; and the House of Representatives elects a Speaker. The General Assembly meets regularly on the first Tuesday of January every second year, and at other times when called by the Governor for special purposes.

#### **National Senators and Representatives.**

The United States Senators are elected by a majority vote of the two Houses of the State Legislature voting together, and it is the difficulty of obtaining this majority in favor of any one candidate that so often leads to our Senatorial dead-locks, three or more candidates being sufficiently strong in votes to prevent any one of them receiving a majority.<sup>1</sup> The United States Representatives, who are elected directly by the people, are apportioned among the States according to their respective populations. Pennsylvania, with a population of 6,302,115 in 1900, was entitled to thirty-two Representatives in the National Congress, or

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<sup>1</sup> For an explanation of the exact meaning of "majority" and "plurality" see Chapter III, p. 36.

one Representative to each 196,941 of the population. For the purpose of electing these Representatives the State was in 1901 divided by the Legislature into thirty-two districts, each district to elect its own member of Congress. The number of Representatives is based on a certain ratio of population and is liable to change whenever a national census is taken. Thus, by the census of 1890, Pennsylvania was found entitled to thirty Representatives, two more than formerly. The State Legislature did not re-district the State until 1901, so that the two extra Congressmen were elected by the people of the State as a whole, and were popularly called Congressmen-at-large. Under the new apportionment these Congressmen-at-large disappear.

**State Senators and Representatives.** For the purpose of electing the State Senators, the State has been divided into fifty Senatorial districts on a basis of relative population, each of which is entitled to elect one Senator. For the purpose of electing State Representatives the State has similarly been divided into districts, and the Representatives apportioned among them, the number of State Representatives being two hundred and four.

**The Mayor.** The chief executive officer of Philadelphia is the Mayor. He must be at least twenty-five years of age, and must have been a citizen and inhabitant of the State for at least five years next before his election. The Mayor is chosen by a plurality of the votes cast at the municipal election, and holds his office for a term of four years from the first Monday of April next ensuing his election. He is not eligible to the office for the next succeeding term. If there is a tie vote between the two or more candidates receiving the highest number of ballots, the City Councils shall by a majority vote choose one of them Mayor. When a vacancy occurs in the office of Mayor, a successor is elected at the next municipal election taking place more than thirty days afterwards, unless such an election occurs in the last year of the Mayor's term, in which case a Mayor pro tempore is chosen by a majority vote of the City Councils. Until the vacancy is filled the President of the Select Council acts as Mayor. The Mayor appoints the heads of the various City Departments, such as the Director of Public Safety.

**The City Councils.** The legislative power of the City is vested in the City Councils, which

consists of two branches, the Select and the Common Councils. The term of members of the Select Council in Philadelphia is three years, and of members of the Common Council two years. Each ward of the city is entitled to one Select Councilman, and to one member of the Common Council for each four thousand qualified voters, but each ward, no matter what its population, is entitled to at least one Common Councilman.

**Other Cities.** The governments of other cities within the State are very similar to that of Philadelphia.

**Federal Judges.** The National Judiciary consists of the United States District Courts, of which there are three in Pennsylvania, one for the Eastern District at Philadelphia, one for the Middle District at Scranton, Williamsport and Harrisburg, and one for the Western District at Pittsburg and Erie; the Circuit Court of the United States, and the Circuit Court of Appeals; the Court of Claims, which has jurisdiction of all claims against the United States; and finally the United States Supreme Court, which is the highest tribunal in the land. The judges of all the Federal Courts are appointed by the President.

**State Judges.** The State Judiciary consists of the County Courts, which are designated the Courts of Common Pleas and the Orphans' Courts; the Superior Court, which has final jurisdiction of most cases involving less than fifteen hundred dollars on appeal from the County Courts; and the Supreme Court, to which may be appealed all cases involving more than that sum, and which also considers appeals from the Superior Court in certain instances.

The judges of all the State Courts are elected by the people, although the Governor has the power to fill temporary vacancies pending a general election.

The Common Pleas Courts, of which there are five in Philadelphia County with three judges for each Court, include the criminal courts as well, which are called the Courts of the Quarter Sessions and of Oyer and Terminer. The regular Common Pleas judges sit in turn in the criminal courts.

The Orphans' Court, for which in Philadelphia four separate judges are elected, is chiefly concerned with decedents' estates, the rights of orphans, widows, and others under wills, and the duties and liabilities of executors, administrators and other trustees.

There are twenty-eight magistrates' courts in Philadelphia, the ratio being one for each thirty thousand inhabitants. These magistrates have general criminal jurisdiction, and civil jurisdiction in cases of contract not exceeding one hundred dollars except where title to real estate or breach of promise of marriage is involved. An appeal may be taken from the Magistrate's Court to the Court of Common Pleas in all cases where the amount involved is over \$5.33.

**District Attorney.** The District Attorney is the officer of the law charged with the duty of prosecuting on behalf of the State persons accused of crimes. He is elected by the people and is an officer of the county.

## Chapter III

### ELECTIONS—QUALIFICATIONS OF VOTERS

#### Elections

**Election Divisions.** In order to facilitate the election of public officials the entire State is divided into election "divisions." These range in size from three city blocks to much larger areas in the sparsely settled districts. The territory is so divided that between two and four hundred voters live in each division. Within each division is a polling place at which all elections are held.

**Primary Elections.** Nominations to public office are usually made at conventions composed of delegates elected in each election division at the party "primaries." The delegates are elected to represent wards, counties or the state according to the office for which the convention is to nominate. The dates on which these primary elections are held are

designated by the Executive Committees of each party. Usually they are held three or four months in advance of the general elections. Only those persons who are regular members of the party holding the primary election are entitled to vote there. In general it is safe to assume that any person who has voted for the first name in the party column at the last previous general election, and who expresses a willingness to support the principles of the party, may vote at its primaries. The precise qualifications which a voter must possess are set forth in the rules of the various parties.

**General Elections.** General elections are held twice a year. The election for Federal, State and County officials takes place on the Tuesday next following the first Monday in November, while the election for City and Ward officers is fixed for the third Tuesday in February.

### **Qualifications of Voters**

**Age.** Every male citizen, twenty-one years of age and upwards<sup>1</sup> is entitled to vote at all

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<sup>1</sup> A minor may vote on the day preceding the twenty-first anniversary of his birth.

general elections, provided that he possesses the following qualifications:

**Citizenship.** He must have been a citizen of the United States at least one month. A person may acquire citizenship either by birth or by naturalization. If it has been acquired in the latter way, then an elector must present his naturalization papers to the election officers when he claims the right to vote, in order that they may be properly stamped.

**Residence.** He must have resided within the State of Pennsylvania for one year; provided, however, that if he had removed from the State and later returned, then, if he was formerly either a native born citizen of the State, or a duly qualified elector, a residence of six months prior to the election is sufficient. He must have resided within the election district in which he proposes to vote for at least two calendar months previous to the election. In general a person acquires a residence in any one place when he exhibits a bona fide intention to make that house his established home. If a man moves into a division solely to vote there then he does not acquire a legal residence and may be deprived of his vote. Mere temporary absences do not cause a man the loss of

his legal residence. In general a student cannot acquire a residence at an institution of learning which he attends, as his residence, in the absence of special circumstances, is determined by that of his parents.

**Taxes.** He must, if twenty-two years of age or upwards, have paid within two years a State or County tax, which was assessed at least two months, and paid at least one month before the election. It is sufficient if the applicant has paid a State or County tax assessed on either real or personal property. The property taxed must be in the State of Pennsylvania, and must be held in the voter's own name. Payment of a mercantile tax, or a tax for any license does not entitle a person to vote. If the person seeking to vote has paid a poll tax (fifty cents) that is sufficient. That may be paid in Philadelphia at the office of the Receiver of Taxes at the City Hall, or (in the Fall only) through agents designated by the Receiver in the various wards. Receipts for poll taxes are usually issued only during the fifth or sixth week prior to election. The poll tax must be paid by the voter himself, or by some agent carrying a written order to the Receiver of Taxes, authorizing the bearer to pay the poll tax and to receive the receipt

therefor. A person who claims to have paid the requisite tax must be prepared to produce the official receipt to the election officers. If he cannot do this, he must be prepared to make oath that he has lost or destroyed his receipt, or never received any. He must also state the time and manner of payment.

**Voting on Age.** A person who is between the ages of twenty-one and twenty-two may vote "on age," without having paid any tax. Such persons must be vouched for at the polls by one duly qualified voter, who will make an affidavit to the truth of the facts which they claim give them the right to vote, i. e., residence, citizenship and age.

**Assessor's List of Voters.** The statutes provide for the election of an assessor in every election division. These officers are required to make a house to house canvass in May and December of each year, and from the information so acquired, to prepare a correct list of duly qualified voters. Every person whose name is on this list is presumed to be a duly qualified voter, and, unless challenged, is entitled to vote on election day without further formality than stating his name and residence. If, however, an elector's name is not on the

assessor's list of voters, then he must be vouched for by some duly qualified voter of the division, who will make an affidavit to the facts necessary to establish the claimant's right. To avoid this unnecessary trouble, it is advisable for the voter to make sure that his name is properly entered on the assessor's list. After the assessment has been made the list of voters must be posted on the outside of the polling place, where it may be consulted by any citizen. Furthermore, the assessor is required by law to be present at the polling place on the sixty-third and sixty-second days prior to every election. Any voter whose name is not on the posted list should call upon the assessor on either of the above days between the hours of 10 a. m. and 3 p. m., or 6 p. m. and 9 p. m. and direct him to correct the list by the addition of his name.

**Voting.** On election day the polls open at seven o'clock in the morning and remain open until seven in the evening. Within the polling place a portion of the room is separated from the rest by a guard rail. Within this rail are the five election officers as follows: one judge of elections, who has the final power to pass on the qualifications of voters; one inspector rep-

representing the majority party and one inspector representing the minority party and two clerks. These officials are paid by the county, and are obliged to keep the requisite records of the election and to compute the returns at the close of the day.

When the voter enters the polling place he states his name and address to one of the inspectors. An examination of the official copy of the assessor's list of voters is then made by the election officers. If the applicant's name is properly entered thereon he is, unless he is challenged, given a ballot by one of the clerks. If his name is not on the list, or if he is challenged then he must be vouched for as explained below. When he has received his ballot he is allowed to pass the guard rail in order to enter one of the small compartments reserved for the use of voters. There he must mark his ballot in accordance with the directions printed on its face. Under the present law, the voter may mark a cross in one of the squares on the left hand side of the ballot. These squares are placed opposite the names of the various parties. If a voter marks a cross in one of these squares, that casts a vote for every candidate of the selected party, or to use the common phrase the voter has cast a

“straight” ballot. If, however, he wishes to “split” his vote, then he must ignore the party squares and instead mark a cross in the square printed to the right of the name of the particular person for whom he wishes to vote. Care should be taken not to mark more than one name for each office to be filled. In preparing any ballot, it is essential that the marks should be crosses and not straight lines, circles or figures. After the ballot has been secretly prepared in the compartment, the voter must fold it in such a way that no one can see how he has voted. He must then hand it to one of the election officers, who should immediately deposit it in the ballot box in the presence of the voter.

**Assistance.** If a duly qualified voter states to the judge of elections that because of some disability he is unable to mark his own ballot, then the judge may allow the voter to select some duly qualified elector to enter the voting compartment with him in order to aid him by marking his ballot in accordance with his instructions.

**Challenged Voters.** If a voter is challenged for any reason at the polls on election day, he can, nevertheless, establish his right to vote

provided he makes an affidavit setting forth that he possesses all the qualifications required by law; and, provided, further, that he is "vouched for" by a duly qualified voter of the same election division. This "vouching" amounts merely to a sworn identification of the applicant by some person who can establish the applicant's residence within the precinct for the necessary length of time.

**Special Disqualifications.** Any person who has offered a bribe to any other person with the object of influencing his vote, and persons who have made bets on the result of the election at which they offer to vote, are disqualified from voting at the election to which their act refers.

All persons who have been convicted of a wilful violation of the election laws are prohibited from voting for four years.

**Majority and Plurality.** The terms "majority vote" and "plurality vote" are frequently used in discussing election returns and sometimes misunderstood. When a candidate receives more than half the total number of votes cast for the particular office for which he is nominated, then he is said to have been elected by a "majority vote." If he receives five thou-

sand more than half the total number of votes cast then he is said to have been elected by a "majority of five thousand." If, however, there are three or more candidates for a particular office and no one receives enough votes to give him more than half, then the one receiving the highest number is said to have been elected by a "plurality." Suppose, for example, that Brown, Jones and Robinson have been nominated for the office of Inspector of Elections in a particular election division and have received the following votes: Brown, 150; Jones, 120; and Robinson, 100. The total vote cast was 370. No one has received 185, or one half of the total. Therefore, no one has received a "majority." Brown has, however, been elected by a "plurality of 30 over Jones."

## Chapter IV

### PASSPORTS

A passport is practically a certificate of citizenship issued for purposes of identification and protection to those who are about to travel abroad.

**Granting of Passports.** Passports may only be granted by the Secretary of State to citizens residing in this country. A person who is entitled to receive a passport, if temporarily abroad, should apply to the diplomatic representative of the United States in the country in which he happens to be. A person who has only made the declaration of intention to become a citizen cannot receive a passport.

**Application.** A citizen who desires a passport should write to the Passport bureau of the Department of State at Washington, and ask for an application blank. When this is received he must make written application, sworn to before an officer authorized to administer oaths,

to the Secretary of State. The applicant must state the date and place of his birth, his occupation, and the place of his permanent residence, and declare that he goes abroad for temporary sojourn and intends to return to the United States. He must also take the oath of allegiance to the National Government.

The application must be accompanied by a description of the person applying, which should give information as to the following points: age, stature, forehead, eyes, nose, mouth, chin, hair, complexion, face. At least one credible witness must certify that the applicant is the person he represents himself to be.

A person born abroad, whose father was a native citizen of the United States, must show in his application that his father was born in the United States, resided therein, and was a citizen at the time of the applicant's birth.

A naturalized citizen must transmit his certificate of naturalization, or a certified copy of the court record thereof. It will be returned to him after inspection. He must state when and from what port he emigrated to this country, what ship he sailed in, where he has lived since his arrival in the United States, when and before what court he was naturalized, and that

he is the identical person described in the naturalization certificate.

A woman, in her application, should state in addition to the before mentioned facts whether she is married or unmarried, and if the wife or widow of a naturalized citizen, she must transmit for inspection her husband's certificate of naturalization, and set forth all the facts relating to his emigration and residence in this country.

The child of a naturalized citizen, who claims citizenship through the parent's naturalization, must state that fact and set forth all the details concerning it.

**Expiration.** A passport expires two years from the date of its issuance, but a new one may be obtained on application.

**Family.** When the applicant is to be accompanied by his wife, minor children or servant, if these facts are set forth, together with the children's ages, and the servant's allegiance stated, one passport will be issued which will suffice for all.

**Fee.** A fee of one dollar is charged by the State Department for each passport, and this fee must be sent in currency or postal money

order, made payable to the Disbursing Clerk of the Department of State.

**Consuls.** Consuls, who are the commercial representatives of the United States in foreign countries, have certain official functions to perform, such as commercial duties, which pertain to the movement of trade between the home and foreign country; judicial duties, which are largely investigations of the difficulties or crimes occurring in which American citizens are involved; and more general advisory duties, which make them the helpers of traveling Americans, who meet with difficulties or misfortunes from which the experience of a trained official can assist them. Every American citizen has the right to appeal to his consul for assistance and advice.

## Chapter V

### CONTRACTS

**Definition.** The general term "contract" includes every manner of agreement or obligation, by which one party agrees to do, or not to do a certain thing, in return for something done, or not done, by another party. Thus, one party may say that he will pay a certain sum of money, or perform or omit to do a certain act, provided the other party will do something on his side in return. It is therefore generally said that a contract is the result of an offer made by one party, and an acceptance of that offer by another. When the offer is accepted both parties have virtually exchanged promises, and each is thereafter bound to carry out his part as agreed upon in the terms of the contract.

**Who May Contract.** The contract or agreement should, of course, bind both parties, but there are certain exceptions to this rule. Persons under twenty-one years of age, usually called infants or minors, can only make valid

contracts for things which are necessary for their lives and health, such as food, clothes and the like. Contracts which an infant makes for other things than necessities are not absolutely null and void, but are what is known as voidable. That is, the infant may disavow them, either before he becomes of age, or within a reasonable time afterwards. On the other hand, he may ratify or confirm the contract when he comes of age, and in that case the contract will be regarded as having bound both the parties to it from the time when it was originally made.

Another class of persons who are not always free to make contracts are married women. Originally the property of a married woman was supposed to belong entirely to her husband, and she had no right to dispose of it according to her own will. This old restriction has been gradually done away with by various statutes, and now the limitations upon a married woman's right to make contracts are very few, consisting chiefly in restrictions as to selling or conveying real estate, and in becoming responsible for the debts of her husband and others.

There are two other classes who are incapable to a great degree of making contracts

—intoxicated persons and those who are insane. With regard to intoxication, the rule is that if one of the contracting parties is so drunk that he does not know what he is doing, the contract is altogether void if the other knew of his condition, but if the other party entered into the contract innocently, that is, in ignorance of his contractor's mental condition, and would suffer loss if the contract were not performed, then the party who was intoxicated will be bound by his act.

An insane person, like one who has not attained his majority, is liable on a contract only for the necessities of life that have been furnished to him, and in addition for such things as were supplied to his order by an innocent person, who had no knowledge of his infirmity when the order was given.

**Consideration.** There must always be a cause or a consideration for every contract, for the reason that a person is not supposed to bind himself, or to agree to do something, unless he receive some consideration therefor. If there is no such cause or inducement the promise is an empty one, and the one who made the promise is under no legal obligation to perform it. It is in no sense a contract. The consideration

or motive for the offer or the promise need not appear definitely in so many words in the agreement, but it must exist in some form. Anything which in the least degree affects or concerns the parties interested may be regarded as the consideration, but it must not be of an illegal nature, fraudulent nor immoral, as contracts made with such considerations are held to be opposed to public policy, and therefore void. Thus, a promise to pay a gambling debt is regarded as no consideration for another promise.

**Mutual Understanding.** Both parties to a contract must agree as to the terms of the contract in order that it may bind both. They must both have a full knowledge of what they are doing, and must agree to the same thing in the same sense. If this is not the case, the contract will not be complete. Thus, in one instance a person offered by letter to sell another a quantity of "good barley" at a certain price. The other replied: "We accept your offer, expecting you will give us fine barley and full weight." The barley was not delivered, and the other sued for the loss he had suffered. At the trial it was shown that the business terms "good" and "fine" as applied to barley

meant entirely different qualities of barley, that both parties knew this, and that therefore there had been no acceptance of the offer of "good barley." It was decided that there had been no contract because there had been no mutual agreement in reality.

**Assent.** Assent to an offer is sometimes inferred from circumstances, without any definite act of assent on the part of the person who agrees. A common instance of this is when a passenger purchases a railroad ticket bearing certain conditions printed upon its face to which the passenger is supposed to agree if he wishes to ride on that road. The mere use of the ticket by the passenger is his assent to the conditions upon which the ticket is issued.

**Acceptance.** If the person who receives an offer accepts it on any new condition, or by changing its terms in any way, even though the change be apparently an unimportant one, the contract will not be complete until the party who made the original offer agrees to the change. Moreover, when an offer is immediately accepted, but the understanding between the parties is that it is to be put into writing, it is usually not binding until written out.

It follows that inasmuch as when one party has agreed to the terms of the other party the contract is completed, so those terms cannot be altered without another and distinct agreement.

An offer is generally supposed to remain open until it is accepted or withdrawn. Often, however, a time limit is stated, as when the person making the offer says to the other, I will give you an hour, or a day, or a week to decide. If the person to whom the offer is made accepts within the time allowed him the contract comes into effect as truly as if the acceptance had been given the moment after the offer was made. It is usual, however, in such cases for the one to whom the offer is made to give to the offerer a payment for his keeping the offer open for a definite time, as otherwise the offerer could withdraw his offer at any moment, even before the time limit had expired, because he had received no consideration in return for his agreement to keep the offer open.

A large number of contracts are made by mail or by telegraph. In these cases it is often a question when the acceptance shall be regarded as having taken place, whether at the time the letter or telegram accepting the offer is sent, or when it reaches the person who made

the offer. The rule is as follows: When A. writes to B. offering to sell him certain goods, this offer is regarded as continuing in force until it reaches B., and in addition a reasonable time afterwards in which he may accept it. A. may, however, withdraw the offer at any moment before B. accepts it, but the offer will not be regarded as actually withdrawn until a notice of such withdrawal actually reaches B. For example, if A. in Philadelphia writes to B. in New York, and offers to sell him fifty tons of coal at a certain price and the next day changes his mind, and immediately writes to B. withdrawing his offer, B., provided he receive the first letter before the second, may accept A.'s offer and hold him to the contract. If, however, B. should receive A.'s letter of withdrawal before he has accepted the offer, the original offer would be at an end, and it would be too late for B. to accept it. To accept B. need only mail his letter of acceptance or send his telegram. The acceptance is complete when the letter is given to the post office to send. The telegraph may be used to withdraw an offer sent by mail, and if the telegram withdrawing the offer reaches B. before he receives A.'s letter making the offer or has accepted it the offer is at an end.

**Contracts Which Must be in Writing.** Some contracts must always be put in writing, and signed by the parties obligating themselves. Such contracts are promises made by an executor or an administrator of any estate to pay the debts due by the estate, promises to pay personally the debts of another person, agreements for the sale or leasing of land which are not to be performed within one year from the time when they are made; promises made upon consideration of marriage, excepting mutual promises to marry; and contracts for the sale of goods of the value of fifty dollars or more, unless the buyer has received part of the goods, or something has been given in part payment.

**Guaranty.** A promise to pay the debt of another is usually called a contract of "guaranty." Such a contract creates an obligation on the part of the person who promises, to pay a certain sum, if the one who is guaranteed—usually called the principal—is unable to obtain the sum owed to him by the debtor. The contract of guaranty must, as has been stated, be put in writing, and must be accepted by the guarantor. The guarantor cannot be held for a larger sum, nor for a longer period of time, than the original debtor, and when the debtor's

liability ceases, the liability of the guarantor ceases also.

**Surety.** A very similar form of contract is that of a "surety," who binds himself to pay a certain amount if another, called the principal, defaults in making payment. The distinction between the liability of a guarantor and of a surety is very difficult in many cases to determine, but in general the guarantor's liability does not begin until the creditor has tried every means to collect from the debtor himself, whereas the creditor in the other case may, if he wishes, proceed at once against the surety instead of against the debtor.

One who becomes surety for another should always learn at the outset the nature and limits of his liability, and require of the person for whom he is obligating himself security sufficient to cover his loss in case the creditor demands that he pay the amount due by the principal.

**Form of Contract.** The following is a simple form of contract:

Articles of agreement, made this 19th day of December, 1903, by and between Robert Burns of the first part, and Walter Scott of the second part, witnesseth:

That the said Robert Burns for and in consideration of the sum of thirty-five (35) cents for each and every barrel hereafter made and delivered, hereby agrees to make and deliver to the said Walter Scott, two thousand (2000) flour barrels; the staves and heading to be of good sound seasoned white oak timber, and the hoops of black ash, round or square. The said barrels are to be manufactured in a good and workmanlike manner, and are all to be delivered to the said Walter Scott at his flour mill, in the City of Philadelphia, within four (4) months from the date of this instrument.

And the said Walter Scott, on his part, agrees to pay the said Robert Burns in cash the sum of thirty-five (35) cents for each and every barrel so delivered upon the delivery of the same at his mill, as aforesaid: Such payment to be made as often as the said Robert Burns shall deliver fifty (50) barrels, in the proper proportion for the same.

In witness whereof, the parties have hereunto set their hands the day and year first above written.

ROBERT BURNS.  
WALTER SCOTT.

Witnesses:

WILLIAM WORDSWORTH.  
ROBERT SOUTHEY.

## Chapter VI

### PRINCIPAL AND AGENT

**Agency.** A great amount of modern business is transacted by representatives acting for their principals. This representation of one man, or body of men, by another is called "agency."

Agents are of two kinds, general and special. A general agent is one who is authorized to act for his principal in all his business, or in all of one particular branch of his business. A special agent is one who is authorized to do only one special thing, or a very limited number of things.

Practically any one may be an agent, even those persons who are incapable of acting independently for themselves, as minors, married women, or foreigners visiting the country.

**Power of Attorney.** The most common manner of giving authority to another to act

for you is by giving him a written statement to that effect. This document, setting forth that you hereby authorize such a one to act in your place, is called a "power of attorney." The power of attorney may be under seal, and in such a case the agent is empowered to execute documents under seal for his principal, but if he acts only by oral authority he cannot execute papers under seal. To do this requires special authority.

**Implied Authority.** When a man has dealt with a person who has continually been authorized to act as the agent of another, he is justified in believing that he is still the other's agent, unless some facts arise which should put him on inquiry. But if the agent attempts to transact some business which he has not been accustomed to transact, the man with whom he is dealing should require him to show his authority for this departure. Thus if a clerk has been accustomed only to discount notes for a customer, and never to sign checks, if he offers to sign a check the customer should inquire if he has authority to bind his principal in this new way. It must be remembered, however, that authority is often given as well by acts as by words, and that if the principal acts

in such a manner as to lead a third person to believe that a certain man is his agent for a variety of transactions, the third person may be justified in trusting him as such.

**Ratification.** When a principal learns of his agent's acts and ratifies them, the acts become valid, although the agent originally had no such authority. But at the same time he ratifies the principal must be acquainted with all the facts, and not be acting in the dark. If the principal accepts the benefits arising from the agent's acts, he cannot later deny the agency, he must either affirm the whole of his agent's act and accept the benefits with the burdens, or deny the whole of the act. Whatever the agent agreed to do that the principal who knowingly ratifies the agent's act thereby agrees to do.

**Secret Principal.** It frequently happens that one man desires not to be known as a party to a contract or business transaction, and requests another to act for him. The unknown principal in such a case does not appear at all, and the third parties deal with the agent, thinking him to be the real principal. In such a case, the unknown principal may later reveal himself, and take the benefits of his agent's acts, but he

may not in doing so cause the third parties any loss. If they thought the agent was the principal they may hold him to his contract as the principal, and the real principal may only take his place when no loss will result to the innocent third parties by his revealing himself as such.

**Kinds of Agents.** Among the more common kinds of agents are factors, brokers and cashiers.

A "factor" is a business agent who is employed to buy and sell goods for another person, and is authorized to take and keep possession of the goods for his principal. Thus, a factor is permitted to act for another, but to appear as though only acting for himself, inasmuch as the goods he purchases are delivered to him and kept by him for his principal.

A "broker," on the other hand, although he is also an agent employed to buy and sell for another, must always act in the name of his principal, and cannot hold the goods he purchases in his own name at all. One dealing with a broker always knows that he is merely an agent.

A "cashier's" powers differ in various banks and business companies, but he is usually au-

thorized to act as an agent for his house in receiving or paying bills or notes, receiving and depositing money, discounting and cashing checks, and in general transacting the financial affairs of his employer. He may, as a general agent, bind his bank by any act done within the scope of his authority.

**Powers of an Agent.** A general power of attorney carries with it the power to do whatever is essential to its execution, and to make use of a certain amount of discretion in doing so. The agent is of course supposed to act in the manner usually employed in accomplishing the work entrusted to him. If the agent appears to be acting properly, and his powers are general, one dealing with him is not bound to inquire as to the express limits of his authority. But if the agent be merely employed to do a specific thing, the third party should inquire closely as to the limits of his power. In the case of the general agent the principal will be bound by all acts which appeared to be within the agent's power of attorney, in the case of the special agent the burden is upon the one who dealt with him to show that the act done was strictly in line with his authority. Thus, if an agent is specially authorized to receive

payment from customers in cash, one who paid him by a check could not maintain that by accepting it the special agent bound his principal. The act of accepting a check was beyond the strict limits of his authority. An agent cannot ordinarily appoint a sub-agent to take his place and act for his principal, unless he has been given authority to do so. The power of attorney must be strictly followed in all its details and when a power is given to two to exercise jointly, one cannot bind the principal by acting without the other.

Authority to sell does not ordinarily give an agent authority to buy, nor authority to collect a debt, allow an agent to cancel it by a counter claim against his principal. But where certain powers are, by usage of business, closely connected with a general power, they will be regarded as included in the latter. So, authority to sell horses usually carries with it authority to warrant their condition, or the power of a broker to procure insurance for a customer often carries with it the right to adjust a loss,

**Revocation.** The principal may at any time revoke the authority he has given to the agent, but he should always see to it that those per-

sons who have been accustomed to deal with that agent as his representative are made aware of the revocation of the relationship. Otherwise, one who continues to deal with the agent in ignorance of the end of his power to bind his principal, may still hold the latter for the agent's acts.

An agent may also withdraw from his relation to his principal at any time, provided, and this applies to the principal's revocation as well, by doing so neither party will be injured. One may not damage another by withdrawing from the relation at a critical time.

The death of a principal ordinarily puts an end to his agent's authority.

**Liability of Principal.** If one deals with an agent knowing that the latter is exceeding his powers of agency, he cannot hold the principal for the agent's fraudulent acts, but if an agent in dealing with an innocent party, defrauds the latter, he makes the principal liable for his fraudulent act, although the principal was himself entirely guiltless of any wrongdoing. The principal will not, however, be responsible for his agent's criminal acts, unless he expressly commanded them.

All information which is given to an agent

is supposed to be given to his principal, and the latter is to be regarded as having full cognizance of all such knowledge. Similarly, notice given to the agent is notice to the principal in those cases where the relationship is very close, but not in cases where the agent would not be supposed to act in a strictly confidential and intimate relationship with his principal.

When an agent suffers any loss in fulfilling his principal's orders, he is entitled to be indemnified by the principal, and on the other hand an agent will be held responsible to his principal for any loss which the latter may suffer through the neglect of duty or culpability of his agent.

One who has no authority whatever to act for another, but pretends that he has, cannot, of course, make anyone but himself liable, and a third party who deals with him can recover only from him. There must always be some authority given in order to hold anyone but the actual agent himself, and in dealing with one whom you know to be merely the representative of another, it is the part of wisdom to discover just exactly what the scope of his authority is.

**Form of Power of Attorney.** A common form of a power of attorney is:

Know all men by these presents, that I, Robert Whiteing, of the City of Philadelphia, have made, constituted and appointed, and by these presents do make, constitute and appoint John Bacon, of New York, my true and lawful attorney for me and in my name, place and stead to purchase iron ore for me for use in my business, and have given and granted, and by these presents do give and grant, unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the purchase of said iron ore as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue thereof.

In witness whereof, I have hereunto set my hand and seal the 10th day of December, A. D. 1903.

ROBERT WHITEING. [L. S.]

Signed, sealed and delivered  
in presence of

EDWARD BROOKE.

Form of Revocation of a Power of Attorney:

Know all men by these presents: That whereas, I, Robert Whiteing, did, in and by my letter of Attorney, dated December 10, 1903, constitute and appoint John Bacon, my true and lawful attorney, for me and in my name to purchase iron ore for use in my business, as by the said letter of attorney appears: Now, therefore, I, the said Robert Whiteing, by these presents do hereby revoke, countermand, annul, and make void, the said letter of attorney, dated December 10th, 1903, and all power therein and thereby, or in any manner given or intended to be given the said John Bacon, his substitute or substitutes by him appointed.

In witness whereof, I have hereunto set my hand and seal the 12th day of December, A. D. 1904.

ROBERT WHITEING. [L. s.]

Signed, sealed and delivered  
in presence of

EDWARD BROOKE.

## Chapter VII

### BUYER AND SELLER

**Sales.** In order to have a sale there must be an agreement by two parties that the ownership of certain goods shall pass from the seller to the buyer for a price arranged between them. The completion of a sale does not depend merely on the delivery of the goods from the seller to the buyer, nor on the payment of the money alone. It depends on whether the ownership in the goods has actually passed from one to the other. Thus, a sale may take place although the goods sold are left for safe-keeping in the possession of the seller, or it may have taken place although the seller refuses to deliver them until the buyer pays the purchase price.

The seller always has the right to keep the goods sold until the price is paid for them. This right to retain the goods is called a lien, which means a right to retain control of the property until some charge on them is satis-

fied. But this lien is at once lost when the holder voluntarily parts with the goods.

**Re-sale.** If the buyer refuses to take the goods and pay for them within a reasonable time, the seller may re-sell them, and charge the original party who agreed to buy them with any loss he may suffer by the second sale.

**Delivery.** Delivery of a portion of the goods is considered as a delivery of the whole in passing the ownership. Thus, delivery of the key to a warehouse will pass title to the goods stored within which have been contracted to be sold.

**Title.** If the seller is not the real owner of the goods, but has hired them, or found, or received them from a thief, he cannot sell them and pass a good title as against the real owner. The owner in such a case may recover the goods from the purchaser, although the latter bought the goods honestly and in ignorance that the seller did not actually own them.

If anything remains to be done by the seller to identify the goods sold, the title to the goods does not pass until that is done. Thus, if a man buys 500 barrels of oil out of a stock of 1000, the seller must designate the 500 to be

delivered before the title of ownership will pass.

Where the goods are to be manufactured or completed at a later time, no sale can take place until the goods have actually been completed and the person giving the order has accepted them.

**Liability of Seller.** Until the goods sold have been delivered the seller is bound to keep them with ordinary care, and is liable for any injury occurring to them through his negligence. If the seller exercises care, he is not liable for any loss or depreciation in the value of the goods, unless such loss arises from some defect that he warranted did not exist.

When the buyer directs how goods shall be sent to him, the seller must send them in that way. If the buyer has given no directions, the goods should be sent in the ordinary way. If proper care is taken by the seller in preparing the goods for transmission to the buyer, the goods will travel at the buyer's risk, and the seller will not be responsible for any loss. But if the seller sends the goods by his own servants, or carries them himself, he is responsible until the goods come into the possession of the buyer.

A buyer who has been defrauded by the seller has a right to cancel the sale, but he should do so as soon as possible after discovering the fraud.

**Warranty.** Sales are often made with a warranty by the seller in regard to the goods. In such a case, goods must be as warranted in order to bind the buyer to pay the purchase price. As a general rule, a mere expression of opinion by the seller is not a warranty, and where the buyer has a chance to examine the goods, he takes upon himself the responsibility of deciding whether the goods are in fact what the seller represents them to be.

Goods sold by sample are impliedly warranted to conform to the samples, and if they do not, the buyer is under no obligation to take them. If goods of a special kind or pattern are ordered, the seller is considered to warrant that the goods delivered are of the particular kind or pattern ordered.

One who sells provisions is always considered to warrant that his provisions are good and wholesome.

When a warranty proves untrue, the buyer ordinarily can only recover from the seller the loss he has suffered through the goods falling

short of the warranty, but where the goods were warranted for a particular purpose, and are absolutely useless unless they fulfill that purpose, the buyer may return the goods as soon as he discovers their unfitness.

## Chapter VIII

### BILLS, NOTES AND CHECKS

**Bills of Exchange.** A "bill of exchange," which is often called a "draft," is an open letter of request written by one person to another, directing the latter to pay a certain sum of money to a third person named in the letter, or to his order. The person who writes the letter is called the "drawer," the person to whom the letter is addressed is called the "drawee," and the person who is to be paid is known as the "payee."

When the drawer has written the letter it is sent to the drawee to be accepted by him. The drawee is allowed sufficient time to look up his accounts with the drawer, and make sure that he is indebted to the drawer for the amount named in the letter. When he has done this, he signs his name as accepting the bill, and he then becomes liable to pay to the person named in the bill the amount thereof. If the drawee does not accept the bill, it is of no value.

In order that the bill of exchange shall be good, it is necessary that it be written in the form of a positive order on the person addressed, that the order be unconditional, that it be an order for the payment of a certain definite sum of money, and only of money, and that it name a time for payment.

When the parties to a bill of exchange live in different countries, or in different states, the bill is called a "foreign" bill; when they live in the same country or state, it is called an "inland" bill.

A bill of exchange is often written as follows:

\$500.00.

Philadelphia, Pa., June 15, 1903.

Thirty days after date pay to the order of John Smith Five Hundred Dollars, value received, and charge to account of

THOMAS ANDERSON.

To Holmes, Lowell & Co.,  
New York City.

**Promissory Notes.** A "promissory note" is a written promise made by one person to pay another person named in the promise a definite sum of money. The one who promises is

called the "maker" of the note, and the one he promises to pay is called the "payee."

To be a good promissory note the writing must contain a definite promise, the promise must be to pay a certain named sum of money, and only money, and to pay it at a certain stated time to a definitely named person.

A promissory note is often written as follows:

\$100.00.

Philadelphia, Pa., June 15, 1903.

Thirty days after date I promise to pay to the order of John Smith One Hundred Dollars, value received, at the Bank of North America.

THOMAS ANDERSON.

**Checks.** A "check" is merely an order on a bank to pay a certain sum of money to a certain person. It is practically the same as a bill of exchange.

**Letters of Credit.** A "letter of credit" is a letter addressed by one person to another, asking the latter to supply a third person with money, goods or credit, the writer of the letter promising to be responsible for the credit of the third person.

**Bills of Lading.** A bill of lading is a receipt by the master of a vessel or the proper officer of any other transportation agency for goods delivered to the master or agent for the purpose of carriage. It is not only a receipt but also an agreement to deliver the goods to the person to whom they are addressed or to his order.

**Negotiability.** Bills of exchange, promissory notes and checks may all be handed on from one person to another, the title to the paper being transferred by each owner writing on the back of it: "Pay to the order of ....., " and signing his own name. This transfer of ownership is called "negotiability." When the holder of such a bill, or note, writes his name on the back of the bill, or note, he is said to "indorse" it, and by indorsing it he becomes responsible for its payment to the person whose name he writes on it. If the holder of the paper merely writes his own name on the back and does not state any one to whom the document is to go, he is said to have indorsed the paper "in blank" and is responsible for its payment to any one who may get hold of it. Thus bills and notes may be handed on indefinitely from one person to another by successive indorsements.

**Payment.** When the time for payment named in the bill or note arrives, the person who holds the paper should present it to the one who accepted the bill of exchange, or the one who made the promise in the promissory note. If the acceptor or the maker refuse to pay, then the holder of the paper should immediately demand payment from the persons who in turn indorsed it. The presenting of the paper is called "the presentment for payment," and when refusal to pay is made the holder files a "protest."

Bills and notes should always be presented for payment on the day named in the writing, called the "day of maturity," unless there are a certain number of extra days allowed by law, called "days of grace," in which case the paper should be presented on the last of those days. "Days of grace" have been done away with in Pennsylvania.

When a bill or note states that it is payable "on demand" or "at sight" it must be paid whenever the one who holds it presents it for payment.

If the day named for payment be a Sunday or a legal holiday, the paper must be presented on the next business day.

The bill or note must always be presented

for payment at the place named in the writing, or if none is named, then at the place of business, or residence of the acceptor of the bill, or the maker of the note. The bill or note, if presented at the place of business, must always be presented during business hours, and a check must always be presented at a bank for payment during banking hours. It is very important that all checks received should be at once presented for payment, or deposited in the holder's bank for collection.

Bills and notes are sometimes given by one person to another after the day named in them for payment, and they are good in the hands of any one whose name is on them even after the day of payment has passed, provided, the acceptor or maker has not paid his debt.

If a man writes his name on the back of a bill or note merely to oblige one who is holding the paper, who cannot get any one to take it without the security of another man's indorsement besides his own, the one who obliges the holder is called an "accommodation" indorser, and can be called on to pay the obligation by any subsequent holder.

**Certified Checks.** When a man wishes to send a check in payment of a debt, and desires

to assure the receiver of it of the check's worth, he may take it to his bank and have it "certified" by the bank. In this case the bank officials ascertain whether the person who drew the check has as much money in their hands as that named in the check, and if they find that he has, they write their certificate on the check, and make the bank absolutely liable for its payment. The check is then called a "certified check." Certified checks are usually required in payment of official debts.

**Married Women's Rights.** Married women have the same right as men in Pennsylvania to make, accept or indorse bills of exchange, promissory notes and checks, but they may not become accommodation indorsers.

## Chapter IX

### PARTNERSHIPS

A partnership is the joint undertaking by two or more persons of an enterprise or business to which they contribute their property or labor for the purpose of earning a common profit. Any persons who are capable of entering into ordinary every-day business relations are competent to form a partnership.

**What Constitutes a Partnership.** It is frequently very difficult to determine whether in a given case a partnership does, or does not, exist. Several persons may join together in one business transaction, and arrange that when they purchase goods each one of them shall take a distinct share. This would not constitute a partnership. It is usual to say that when several persons agree that they will together enter into some particular enterprise and share the gains and losses of that enterprise, they have formed a partnership. When the partnership is once formed the partners may make what agreements they wish among themselves as to the division of the profits and losses, or as to the manner of transacting the

business, but although such agreements will be binding on the members of the partnership, they cannot affect the rights of third parties against the firm. All of the partners will still be individually, as well as jointly, responsible to third parties dealing with the firm, unless those third parties know of the special agreement between the several partners that one or two of a certain number shall alone be liable for their debts. This common responsibility is essential in doing business, as otherwise persons dealing with a partnership would be at the great disadvantage of dealing in ignorance of the relations of the various members of the partnership to each other. It is therefore true that each member of an ordinary partnership is absolutely responsible to every creditor for all the partnership debts whether they result from contracts made by him or by any other member of the firm.

It sometimes happens that a man who is not a member of a firm holds himself out to third persons as such, and contracts obligations in the firm's name. In such cases he, and he alone, is responsible to a third person who has dealt with him, believing him to be a member of the firm. Moreover, two or more men often act in such a way as to induce third persons

to believe that they are partners and to deal with them as such, and in this case the men who so led others to believe in their partnership, cannot deny it now, and are each liable absolutely to the innocent outsider who dealt with them thinking they were a firm. Of course, one man cannot make another his apparent partner without that other's assent, nor can a third person, who knew the two men were not partners, hold them liable as such.

In addition to the regular partners of a firm there may be dormant, or silent, partners, who in reality have no share in the management of the business, and no voice in its conduct; secret partners, who are unknown to the public, but who share in the profits of the firm; and nominal partners, who pretend to be, but are not in reality partners. All of these partners may, when their interest in the firm is discovered by one who has dealt with it, be held liable on the ground, in the case of the dormant and secret partners, that they shared in the firm's profits, and in the case of the nominal partner that he had induced outsiders to deal with the firm partly on the credit of his name.

Ordinarily, a partnership may deal in any form of property real or personal. It may be formed to carry on any legitimate business, and

needs no express authority to enable it to embark in trade of any kind.

**Authority of the Partners.** With regard to the authority of one partner to bind the others, it may be said that the authority of each partner is very great in the scope of the partnership business. Each partner is, in fact, a general agent for the others, and whatever he may do in relation to the customary line of business of the firm, will bind the other members. He may not, however, do something which is entirely foreign to the purpose of the partnership, and so bind the others. If he does, he will alone be responsible unless the other members after learning of his act, ratify it, and so make it the act of the partnership itself. This ratification may be by an express act, or by merely making use of the benefits received from the unusual act of the partner.

In order to bind the partnership each partner must act for the firm and not for himself. He must sign the firm name, buy and sell in the firm name. If he transacts business in his own individual name, he alone will be responsible.

**Dissolution of a Partnership.** Whenever an old partner withdraws or a new member is ad-

mitted into a partnership, a new firm is created. The old partnership is in reality dissolved, and the several partners are alone liable for its debts. The new firm may of course agree to become responsible for the debts of the old, or may enter into any agreement it sees fit with the old firm, but unless some such agreement is reached, the old firm members are still alone responsible for the old firm's debts. Even when the new firm agrees to be responsible, the members of the old firm still remain liable for its debts. It is very important that when a member withdraws from a firm, he should give notice by public advertisement and by special notification to old customers that he is no longer a member of the firm, and cannot be held to account for future firm debts. Should the public continue in ignorance of his withdrawal, he would still be personally responsible in so far as customers and other persons had dealt with the firm relying partly on his credit.

**Liability of Partners.** Inasmuch as a partnership is in reality a form of agency in which the relation of principal and agent exists between the several partners and the firm, any act done by one partner in the business of the partnership, or in other words, in the scope of

his agency, will bind the others. This is true not only of obligations which he may incur in the partnership name, but also of wrongs he may do, as well as of acts of negligence which he may commit. If these are done in the course of the firm business, the members of the firm, just as the master of a servant, or the principal of an agent, will be liable. The act done must, however, always have been within the scope of the partner's authority. For instance, an illegal contract, such as an agreement to pay usurious interest contrary to law, although made by a partner, will not bind his firm, for an agency to wilfully violate the law can never be implied and is never regarded as coming within the scope of a partner's authority.

Unless the members of a partnership have agreed to fix a definite period for the firm's existence, any partner may dissolve the partnership at his own will, although he cannot exercise this right to the loss of the other members. The death of a partner always causes a dissolution of the partnership, and the affairs of the firm are at once wound up. Under such circumstances the liability of the deceased partner to the firm and to its creditors devolves upon his estate.

The property of a partnership upon its dis-

solution must be applied to the payment of the partnership debts, and therefore no creditor of an individual partner can claim any of the partnership funds until all the partnership debts are paid. He can then claim the partner's interest in the surplus in payment of his separate debt. The general rule of liability is usually stated as follows: Partnership property for partnership debts, and individual property for individual debts.

**Limited Partnerships.** A limited, or special, partnership is one in which, in addition to the general partners, there are a number of other members who may contribute certain sums of money as capital, and who are only liable for partnership debts to the amount of capital contributed by them. Persons who desire to form such a special relationship as a limited partnership are required by law to make and sign a certificate giving the general partnership name, the nature of the business, the names of all the general and special partners, the amount contributed by each, and the term of the partnership. All of these facts must be publicly recorded and published, so that the public in dealing with the firm may have an exact knowledge of its nature.

## Chapter X

### CORPORATIONS

By far the larger part of the business of the world is to-day transacted through the agency of corporations. It is therefore necessary for every person to know what a corporation is, and what powers it probably possesses. It should further be borne in mind that the so-called "trusts" are usually only combinations of corporations operating either in the form of a new corporation, or through business agreements between the various constituent companies.

**What is a Corporation?** A corporation for practical purposes may be considered as one form in which a number of persons may combine for the transaction of business, either for gain or for charity. A corporation is composed of a number of individuals who secure from the State the right to transact their business through duly constituted officers, who act under a common name. This right is expressed

in the charter, which is the act of the Legislature that creates the corporation. Formerly, every corporation was created by a special act of the Legislature, but now in the State of Pennsylvania there are general laws which permit the Governor, or the appropriate Court, to issue charters to such applicants as have properly fulfilled certain preliminary requirements.

Corporations may receive charters which will authorize them to exist for a limited period of time or forever. A corporation never dies in the sense that an individual does. Its members may change, and its officers may change, but it may still continue to transact business under the same name for the period of time allotted by the charter.

**Public and Private Corporations.** Certain corporations are said to be "public." In this class are included cities, counties, boroughs, townships, etc. These are created by the State for the purpose of government. By far the most common form of corporation is a "private" corporation, which must be composed, at least in part, of individuals. Common illustrations of the purposes for which private corporations exist are manufacturing, banking, or insuring. Certain corporations are commonly

called quasi-public, because they have certain additional rights in taking private property on the ground that they serve the entire public. An example of such a quasi-public corporation is a railroad, which has, under what is known as "the right of eminent domain," the power to take even against the wish of the owner private property, which lies in the line of its proposed track. Of course suitable compensation must be paid to the owner.

**Corporations for Private Gain and for Charity.** Again corporations are divided into those which are organized primarily to secure profit to their members, and those which are formed to carry out some benevolent or charitable purpose. The former, such as insurance, telegraph, railroad and manufacturing companies, must secure their charters through the Secretary of the Commonwealth and the Governor, while the latter obtain theirs through the local courts.

**Constitution of Corporations.** Corporations for profit usually issue shares of capital stock to the different members, generally granting to each person one share of stock for each one hundred, or each fifty dollars, or other definite amount, invested in the common fund. Each

subscriber is then said to be a stockholder and has the right to vote at the meetings of the company by casting one vote for each office for each share of stock owned by him. Thus the owner of one hundred shares casts one hundred votes, while the owner of fifty shares casts but fifty votes. If, however, more than one officer is to be elected, the stockholder may "cumulate" his votes, i. e., he may cast if he owns one hundred shares, and six directors are to be elected, either 600 votes for one candidate or one hundred votes for each one of the six candidates, or may make any other division of his votes that to him seems desirable.

**Charitable Corporations** seldom issue capital stock. They, therefore, have no stockholders. The managers or trustees sometimes are elected by the contributors, and sometimes are composed of the original corporators and of their successors elected by themselves.

**Management of Business Corporations.** Corporations organized for business purposes are usually governed by a Board of Directors composed of persons elected for a term of one or more years by the stockholders at the annual meeting of the company. Vacancies on the Board during the year are filled by an election

held by the Board itself. The officers of the company, such as the President, the Secretary and the Treasurer are selected and appointed by vote of the Board of Directors.

**Powers of Directors.** The Directors possess the power to manage the property and employees of the corporation in all ordinary matters, but they do not possess the necessary authority to sell or lease the plant of the company without special permission granted by the stockholders. Furthermore, it must be remembered that the Board can only act collectively and that the individual action of its members does not bind the corporation.

**Powers of Officers.** The officers of a corporation are in the nature of general agents and hence they incur no personal responsibility when they are avowedly contracting on behalf of the company. On the other hand, corporations are liable for the acts of their servants while engaged in the business of their employment in the same manner, and to the same extent, that individuals are. In short, they are liable for all the acts of the servants done within the apparent scope of their employment. Thus, a street railway company is liable for damages to a passenger if a conductor illegally

ejects him from a car ; but is not liable for damages if a conductor, seeing a personal enemy on the sidewalk, leaves his car and chastises that person. One act is said to be "within the apparent scope" of the conductor's employment, while the other is outside.

**Powers of Corporations.** All corporations have certain general powers under their charters. Among these may be mentioned the power to have succession under the corporate name; the power to sue and to be sued as a corporation; the power to adopt and use an official seal; the power to sell, acquire and hold such real and personal property (subject to certain restrictions) as is necessary to carry on the business of the corporation; the power to adopt by-laws for the management of its property, provided they are not inconsistent with law. In addition to these specific powers, every corporation has the power to do such acts as are reasonably necessary, advantageous or expedient for the transaction of the business for which it was chartered. On the other hand a corporation has no power to perform acts foreign to the purposes for which it was incorporated. Thus a bank has no power by virtue of its charter to build or operate a railroad, nor

has a manufacturing company the power to establish and manage a hospital. Some difficult questions arise in the determination of the exact powers of any one corporation, but it is beyond the scope of this book to more than suggest the general rules governing this subject.

**Corporate Liability.** A corporation has a general power to make all contracts necessary or proper for carrying out the purposes for which the company was created. These contracts may be made by its agents, either by virtue of express authority granted to them by the Board of Directors, or because of power given to them by implication from the nature of their duties. Thus, for example, a station agent of a railroad company would have the implied power to contract for the shipment of freight. For the breach or non-fulfilment of all valid contracts to which it is a party, a corporation is fully as liable as an individual, and may be made to respond in damages for any injuries caused by the breach of its contracts. So also a corporation is liable for injuries or harm resulting from the commission of wrongful or careless acts by one of its employees, and also for the omission on the part of an em-

ployee to perform a duty which the corporation is bound to meet. For example, a corporation is responsible to the owner of land if one of its agents trespass on his property. If the engineer of a railroad train carelessly overlooks a danger signal and a collision ensues, then a passenger injured therein may recover damages from the corporation which employed the negligent man. Or if, to take one more example, the signal man at a railroad crossing neglects to display the proper signals because he has fallen asleep, then again the railroad company is liable for resulting injuries though in this case the offending employee had done no positive wrong, but only neglected to observe a necessary precaution. Furthermore, the corporation may be liable for injuries which result to an employee caused by the neglect of the higher officers of the corporation to furnish a reasonably safe place in which to work, provided in all these cases that the injured person has not by his own carelessness or wilfulness voluntarily exposed himself to unnecessary danger.

A corporation is also liable for the frauds or false representations of such of its officials as may reasonably be supposed to have the authority to make statements relating to the

facts involved. A corporation may also be made to pay damages for libels or slanders written or uttered by its agents.

**Liability of Stockholders.** The great advantage of a corporation, as opposed to other forms of combinations for the transaction of business, is that the liability of each individual is limited by law and cannot be increased by any act of his associates. Holders of stock in most commercial corporations in Pennsylvania are liable in their individual capacity only to the amount of stock owned by them, and in addition for work done or labor furnished within the last six months prior to the making of the claim. Thus, the stockholder knows in advance the extent of his maximum liability as an individual on account of his participation in the business whereas, in a partnership, he is personally liable for all the debts of the firm of which he is a member.

# Chapter XI

## STOCKS AND BONDS

Among the most common forms of permanent, as well as temporary, investments are stocks and bonds. These are essentially different, though frequently confounded by many persons.

### Stocks

When a company is formed a certain number of persons put their money into a common fund in order to build a railroad, or to buy a factory, or for such other purposes as may seem desirable. Suppose the property to be purchased costs ten thousand dollars. Each of the investors has a certain interest therein. For the sake of convenience a unit of interest, either one hundred or—as is more commonly the case in Philadelphia—fifty dollars is selected. Let us assume that the latter unit is taken. A person who invests fifty dollars can with that money purchase one share of stock in the new concern. He receives a certificate

which states that he owns one share of the capital stock of the company. Thus he becomes a shareholder, i. e., he owns a certain undivided proportion of all the property of the company. A person who invests five hundred dollars thus becomes the owner of ten shares. If two thousand shares of stock are issued at fifty dollars each, then the total amount of money raised is one hundred thousand dollars.

**Rights of Stockholders.** Stockholders have usually two definite rights. First, to vote at all the meetings and elections. Each stockholder has the right to cast one vote for each share of stock which he owns. Thus the owner of ten shares of stock can cast ten votes, but the owner of one share can cast only a single ballot. Corporations are usually governed by Boards of Directors, which are composed of representatives elected by the stockholders at their annual or other meetings. The directors manage most of the routine business and the stockholders are seldom called together. The second right of the stockholder is to participate in the profits of the enterprise. These profits are distributed in the form of dividends. The directors ascertain how much money has been earned, and how much can be

safely divided. They then "declare a dividend" of two or three or more per cent. If the dividend rate is three per cent. then each stockholder receives one and one-half dollars for each share of stock that he owns without regard to its present value. If the directors decide that no money has been earned then the dividend is "passed," i. e., no profits exist and, therefore, the stockholders get no return for their money.

**Par Value.** By "par value" is meant the arbitrary unit of interest in the enterprise. Thus the par value of Pennsylvania Railroad Company stock is fifty, while the par value of most New York stocks is one hundred dollars. On this par value dividends are calculated. The "market price" of stock varies from day to day. If investors think the property is very valuable the price of the stock is usually "above par," while if the corporation is losing money the current price is "below par."

**Guaranteed Stock.** The payment of dividends on stock is occasionally guaranteed by another company. In such a case the stockholder has not only his right to participate in the profits of the company in which he owns stock, but also the additional protection of

the guarantor company. Such an arrangement is very common when one railroad company is leased by another. In such a case the lessee (or railroad renting the property) guarantees to the lessor (or owner of the property rented) that the former will pay a certain fixed dividend upon all the stock of the latter company.

**Proxies.** It frequently happens that it is not convenient for an owner of stock to vote in person at the stockholder's meetings. In such a case he should appoint a proxy or person to vote for him. Such an appointment is usually made by a short form of a letter or power of attorney authorizing the agent to vote on all questions as fully as the stockholder could if he attended the meeting in person. If Reuben Jones wishes to have Amos Judd vote for him at the meeting of the Centralia Realty Company he may execute a proxy (the term is loosely applied to the person or to the certificate of authority) in the following form:

"Know all men by these presents, That I, Reuben Jones, of Philadelphia, do hereby appoint Amos Judd to be my Substitute and Proxy for me and in my name and behalf to vote at the election of the Centralia Realty Company to be held on the 10th day of August,

A. D. 1903, in Philadelphia, and at a meeting of the Stockholders of said Company to be held at the same time and place, as fully as I might or could were I personally present.

In witness whereof, I have hereunto set my hand and seal this third day of August, 1903.

REUBEN JONES. (L. S.)

Witnesses:

BARTON RICHARDS,  
J. Q. Joy."

All that Amos Judd has to do is to exhibit this letter of authority to the officers of the meeting, and he will then be allowed to vote on Jones' stock. An ordinary proxy may be revoked or cancelled at any time at the wish of the maker provided suitable notice is given to all persons concerned.

**Transfers.** Stock may be transferred by filling out the blank forms furnished by the various companies. These forms are usually printed on the back of the stock certificates.

### **Bonds**

In general it may be stated that a share of stock in any company represents a part

ownership in all the property owned by the company. On the other hand a bond is a promise on the part of the company to pay a certain sum of money at a definite time, and to pay interest thereon at a specified rate and at regular periods. Briefly then a bond is merely a promise very similar to a promissory note given by one man to another. A bond does not represent any share in the ownership of the property of the issuing company.

**The Rights of a Bondholder.** The holder of a bond is, however, protected by a mortgage of all the property of the company to a trustee for the bondholders. If then the interest on the bonds is not paid from time to time, or if the principal is not paid at the maturity of the bond, then by suitable legal processes the trustee "forecloses the mortgage" and either sells the property and applies the proceeds towards paying the bonds, or else secures the appointment by the Court of a "Receiver," who will operate the railroad or other property for the benefit of the bondholders until their claims are satisfied. If the property belonging to the company is sufficiently valuable to bring at a forced sale more than the total amount of the bonds, any person may feel reasonably safe

in purchasing such bonds, for he has not only the promise of the company to rely upon, but also the actual property to the extent of the face value of his bonds. The bondholders' claims are always paid before those of the stockholders, because the former are the debts of the corporation, which must be fully satisfied before the stockholder, as owner, has any rights in the distribution of the assets.

**Coupon and Registered Bonds.** Three kinds of bonds are very frequently issued. When a person buys a "Registered Bond" his name and address are entered or "registered" on the books in the office of the company. Thereafter the bond can only be transferred upon his written order. Furthermore, the interest is paid to the owner by checks drawn to his order, which are payable only upon his indorsement. The main advantage of registered bonds is that if they are stolen the thief can secure nothing on them, while the owner can procure a new bond from the company. Some bonds are registered "as to principal only." That means that the protection of the registration applies only to the principal of the bond, and that the interest is paid in the form of coupons, which are payable to any

one presenting them to the Treasurer of the company.

Unregistered "Coupon Bonds" are transferable from person to person with the same freedom as a bank note. Attached to the bond are a number of coupons. Each one of these represents the amount of the interest due on the bond at stated dates, which are printed on the coupons. As each one falls due it is cut off the bond by the owner and presented to the treasurer of the company for payment. It is very customary to deposit such coupons as cash in the bank with which the owner keeps an account. The bank then collects, usually without any charge, the value of the coupons, and places the amount to the credit of the depositor.

If a company fails to pay the interest on its bonds, then it is said to have "defaulted on its interest."

**Debenture Bonds.** Occasionally bonds are issued with a specific promise to pay the principal in any event, but to pay interest only if the property has earned a sufficient amount to warrant so doing. Such bonds are called "debentures," and are as a general rule less valuable than ordinary bonds.

**Classes of Bonds.** Bonds are usually classified as "Government," "Industrial," "School District," etc. By Government Bonds is commonly meant United States Bonds. Industrial bonds include those issued by manufacturing corporations.

## Chapter XII

### INSURANCE

To insure anything is to make a contract with a person or with a company by the terms of which contract such person or company guarantees to protect you against loss in consideration of your making certain specified payments. These payments, which are agreed upon by both parties to the contract, are called "premiums," and may be made in a lump sum at one time, or in periodical payments. The person who makes himself liable to pay in case of loss is called the "insurer," or "underwriter"; the person guaranteed against loss is called the "insured"; and the contract of insurance is called the "policy."

#### Life Insurance

Life insurance is a contract by which a corporation agrees that whenever the insured dies, his beneficiary—widow, children, or other person or persons—shall receive a certain sum.

This sum depends upon the amount contracted for which is always within the limits sets by the company for each insurable age. The price of this contract or promise on the part of the company is so many dollars paid to it usually annually in advance, during the lifetime of the insured. This price, or premium, is different at different ages, varying according to the probable length of life. This form of insurance is known as an ordinary or "straight" life policy.

Another form of life insurance is an "endowment policy," the premiums upon which are only to be paid during ten, fifteen, or twenty years, as the policy may state. The endowment policy has two objects. Let us take for example a twenty-year endowment policy. In the first place, it is a contract to pay a definite sum to the insured at the end of twenty years—one thousand, ten thousand, fifty thousand dollars as the case may be. Second, it is a contract to pay the same sum to the person named in the policy in case the death of the insured takes place within the endowment period. In other words, such a policy combines investment with protection. If the insured lives, he will receive the value of his policy at the end of the term of endowment named in the contract. If he dies within the twenty years his family, wife,

children, or whoever may be the beneficiary, will receive the face value of the endowment just as in the case of an ordinary life policy. These endowment policies vary with the various life insurance companies which issue them. In some cases annuities are paid to the insured from the end of the endowment period, or he may demand the endowment paid in a lump sum.

**Insurable Interest.** In life insurance a person may insure his own life, or the life of another, provided that in the latter case the one who is insuring has a pecuniary interest in the life of the person he is insuring, and in no other cases. Thus a creditor may insure the life of his debtor, a child the life of its father, a wife the life of her husband. It is customary for every person whose life is insured to sign a statement setting forth his age, the state of his health, his residence, and all other facts which may be important to be known by the insuring company. The person whose life is being insured is also required to pass a satisfactory medical examination by a doctor employed by the insuring company. All facts which bear upon the life of the person insured, and which affect the risk taken by the company, must be

truthfully stated if the policy is to be held a valid one. This statement of facts by the insured is usually called the "representation and warranty."

**The Contract.** The actual written or printed contract or policy usually gives the names of the parties to the agreement, the rate of the premium which is to be paid, and the times at which it must be paid, the length of time the contract is to run, the representation of facts by the person insured, and certain conditions or provisos. These provisos often forbid the person insured to travel in certain dangerous regions, to engage in certain hazardous occupations, to enlist for military or naval service, or to commit suicide. Any, or all of these restrictions may, however, be removed by the express agreement of the parties, and a contract may be drawn in almost any form by mutual consent.

The contract of insurance begins to run as soon as the parties agree that it shall start, so that the policy may be good and binding in some cases where the written contract has never been delivered, nor any of the premiums agreed upon paid.

When the contract has been made, the

premiums must be paid as settled upon, and a failure to pay any premium will, unless a special agreement with regard to deferred payments is made in the terms of the policy, destroy the policy. Generally life insurance policies may be transferred or assigned from one person to another at the request of the insured, and upon notice to and consent of the insurer.

**Payment.** The death of the person insured within the time set in the contract makes the insurer liable for the whole amount named. Where the person whose life is insured has been absent from home for seven years, and has never been heard from within that time, he is presumed to be dead, and the insurer is liable on the policy.

### **Fire Insurance**

In order to guard against fires caused either by accident or by personal carelessness, owners of buildings are accustomed to insure their property against loss from such causes. The contract is similar in its nature and terms to the policy of life insurance which has already been described, but some special points are to be noted.

**Insurable Interest.** It is essential that the person taking out the insurance should have an interest in the safety of the property he is insuring. He need not own the property, however, but if he does not he can only insure against the loss which he would suffer by the property's destruction. Thus, many warehousemen and transportation companies take out what is called a "floating policy," which covers the value of the goods which may happen to be in their possession at any given time. A policy covering several distinct buildings or more than one kind of property is called a "blanket policy."

**The Contract.** The policy should describe the property insured as accurately as possible, should set out the amount of the insurance, the period of time which is to be covered, and any special conditions and provisos which the parties may agree upon.

Property can only be insured for what it is actually worth at the time of insurance, but policies covering the full value of the property may be taken in several companies, in which case in the event of destruction of the property, the insured may recover the full value on any one policy, but not the full value on all. The

company which is called upon to pay may then ask for proportionate contributions from the other companies which had insured the destroyed property.

Insurance of a house or building does not cover possible loss by fire of the furniture within the building, but will generally include all the fixtures, such as awnings, heaters, and machinery built into the walls.

In general a standard fire policy purports to cover only "all direct loss or damage by fire." But this is broadly construed, so that it is customary to regard the property which is damaged by water during an attempt to save it from a fire, or while removing it from a fire, as properly the subject of compensation by the insurer. The insurer is also generally held liable for the theft of the insured property during a fire, or for its destruction by the public authorities in order to prevent the spread of a conflagration.

If the insured sets fire to the property covered by the policy with the fraudulent intent of thereby obtaining insurance money, he is not of course entitled to recover such money from the company.

It is always essential that the insured inform the insurer of the title to the property in

question, and that all changes in its ownership be duly communicated to the insuring company. This requirement is usually named in the contract. So also the contract often states that the property must not be left vacant or unoccupied without permission, or in the case of many business houses that the insured must keep a watchman on the premises. These conditions may, however, always be waived by special agreement.

It is imperative that the insurer's risk should never be increased without his knowledge and consent. For this reason, all repairs, alterations, or additions in an insured building, the storing of any inflammable or combustible materials, or any change in the manner of using the building, should always be reported to the insurer, and his written consent thereto be endorsed on the policy before such changes are made. Such changes, slight though they may seem to the person insured, may materially alter the insurer's risk, and so be in fact a very serious violation of the terms of the policy.

### **Marine Insurance**

A contract of marine insurance is a contract whereby the insurer agrees to indemnify the

insured against losses to property caused by the perils of the sea. It is a general rule that the person taking the insurance must have a financial interest in the property insured. He may be interested in the vessel, the cargo, the seamen's wages, the commissions the vessel is to fulfill, or anything directly concerning the ship. He may insure the vessel itself, the cargo, or the earnings.

**The Contract.** A policy of marine insurance should specify what risks the insurers assume, when the risks commence, and for what period they are to continue. When the insurance is for a particular voyage there need be no reference to time. A "time or voyage" policy on goods or freight on a trading voyage will cover all goods or the freight of all goods put on board during the term of the policy or the course of the voyage, and both the outward and homeward cargo. Separate policies of insurance may be taken out in order to protect the property against destruction in different ways, thus the owner of a vessel may insure his ship against losses by fire, by theft, by capture, or by the usual perils of the sea. The general term "perils of the sea" includes all marine casualties resulting from the violence

of the elements, as distinguished from injuries resulting from weakness within. To make the insurer liable on the policy the injury must have been caused by a storm or accident that would injure a seaworthy vessel.

At the time of making the contract the owner is usually required to warrant that his ship belongs to a certain person and country, that she has proper sailing papers, is laden with a certain cargo and is sailing from such to such a port. If these statements are falsely made, the policy will be void. Any material alteration in the course of the vessel must be reported to the insurers and agreed to by them in order to keep the contract binding.

Marine policies may be either "open" or "valued." If the policy be an "open" one, that is one in which the parties have stated no sum as the value of the interest, but have left the amount to be proved in case of loss, the sum payable will be the value of the ship or freight at the commencement of the voyage, including stores, provisions, outfit, and wages paid in advance, or in the case of freight including premiums and commissions, together in both cases with the paid premium of insurance. In the case of a "valued" policy the amount due in case of loss is already determined upon, and is always

presumed to represent the value of the interest which the insured has in the property, and not necessarily the value of the property itself.

### **Accident Insurance**

Accident insurance is insurance against personal injury or loss of life, resulting from an accident, and is similar to the other kinds of insurance already discussed. This form of insurance must be distinguished from casualty insurance, which has reference in general only to injuries done accidentally to property, and not to the person. Strictly speaking, accident insurance applies only to cases of bodily injury or death. Formerly this class of insurance was confined entirely to accidents to the injured person, but it has now been extended to cover contracts by which one insures himself against loss resulting from injuries done to another person, to whom he is legally liable for injury by accident, as in the case of certain employers and their workmen.

The same general rules apply as to necessity for truthful representations, prompt payment of premiums, immediate notification of change in the position of the person insured,

in this kind of insurance as in the previous classes.

**The Contract.** The ordinary accident policy provides that in case of accident the insured shall receive a certain fixed sum per week for a named number of weeks, and a fixed sum shall be paid to his representative in case of death within a certain time after the accident. It is also provided that a fixed sum shall be paid to the insured in case of loss of sight, hands, or feet. In the case of other injuries resulting from accidents the amount paid to the insured is dependent upon the extent of the damage sustained. Provision is frequently made whereby the insured becomes entitled to a certain regular allowance in case of total disability to work.

The usual accident policy contains a clause providing that "no claim shall be valid where death or injury may have happened in consequence of voluntary exposure to unnecessary danger or perilous adventure." The certificate holder is required to show due diligence for his personal safety and protection.

The amount to be paid by the insurer in case of injury by accident is usually an amount which will cover the financial loss resulting

to the insured, by virtue of the accident, and does not take into account his physical or mental suffering. Where the insurance is a sum certain, named in the policy, the insured is entitled to receive that sum, although it may be in excess of his earnings at the time, provided there is no stipulation to the contrary in the contract.

"Sickness insurance" is virtually the same thing as accident insurance, the policy stipulating for payment in certain cases of sickness as the accident insurance policy does in cases of accident.

### **Title Insurance**

A contract of title insurance is one in which the insurer guarantees the title to real estate. This branch of insurance is almost exclusively conducted by companies with special facilities for searching the title to property and warranting the truth of their conclusions. The usual practice of such companies is to have the title to the property in question carefully examined by their title officer, and an abstract or statement giving the history of the title of the property prepared. The company guarantees that its statement of title is correct, and issues a policy to the purchaser who has con-

sulted it agreeing to pay him for any loss which may result to him by reason of a flaw or defect in the title which they have guaranteed.

Title insurance is of comparatively recent origin, but on account of the difficulty in tracing the title of property in large cities the companies formed for that purpose have increased rapidly.

### **Employer's Liability Insurance**

Employer's liability insurance is another recent and important extension of insurance, and is designed to protect employers from losses resulting from the liability they incur in engaging others to work for them.

In general a master is responsible to third persons for all injuries done to them by his servants while the latter are in his employment, and he is also liable to the servants for injuries which they receive in his service which result from his want of proper care. The purpose of an employer's liability insurance policy is to cover all those cases in which the employer or master may become liable to third persons or to his employees for injuries which occur during the continuance of the relation of master and servant.

With regard to the extent of protection the

insurance company affords the employer there is the greatest diversity. Almost no contracts cover the entire field of the employer's possible liability, and the provisions of each contract are made to vary with the scope of the insured's business.

### **Fidelity and Guaranty Insurance**

Fidelity insurance is the insuring an employer against the infidelity or dishonesty of an employee. Guaranty insurance, which practically includes fidelity insurance, is the guaranteeing of good faith on the part of persons holding either public or private places of trust, and the insuring that such persons, firms, or corporations, will perform the conditions of their contracts, bonds, or official undertakings. So policies are often issued for the purpose of guaranteeing that a certain piece of work will be completed in a definite time, or that rent or a promissory note will be paid on a date set.

It is customary in policies of this sort to stipulate that the employer shall immediately notify the insurer of any act of dishonesty or infidelity on the part of the employees in order that the insuring company may at once take steps to prevent any future loss. Insurance

companies of this class keep a careful watch and supervision over the general course of conduct of all those persons for whose honesty they have made themselves liable.

"Credit insurance" is a very similar form of guaranty. In this case the insuring company makes itself liable for the continued credit for a certain period of a definite person or company.

These are the principal forms of insurance, although there are many others not so universally known, as for instance burglar insurance, live-stock insurance, boiler or machine insurance, plate-glass insurance, cyclone and lightning insurance. The name suggests the purpose of each of these different classes, and the same fundamental principles underlie them all, the one party agreeing to assume a certain risk in return for a sum of money paid as a premium. Good faith on both sides is essential in all forms of insurance, and it cannot be too carefully remembered that the warranty or representation of facts by the insured must be true to the best of his knowledge to make the contract between the parties a binding one.

## Chapter XIII

### RAILROAD AND STEAMBOAT COMPANIES

Railroad and steamboat companies, when they undertake to transport passengers, freight or baggage, usually assume definite duties and responsibilities towards their patrons.

#### The Transportation of Passengers

**Responsibility for Safety.** The carrier (i. e., the railroad or steamboat company, as the case may be) does not guarantee the safety of the passengers. The duty of the carrier is to provide for their safety by exercising the highest degree of care and foresight consistent with the efficient operation of the line and the limits of possible expenditure imposed by financial conditions. The carrier does not, however, insure its passengers against all chances of injury caused by accident. For example, a railroad company is not compelled to use the heaviest

steel bridges on some little branch line. Although it is true that such bridges are safer than the lighter ones usually used in such places, still if the heaviest ones were required in every case then the cost of building such a branch would, as compared with the probable receipts, be so great that no capital would be attracted to the enterprise.

One application of these general principles is seen in the fact that the carrier is not responsible to the passengers for defects in its cars or other appliances which could not have been detected by the exercise of the highest degree of care, either during their construction or their later management. For example, defects sometimes occur in the wheels or axles of railroad vehicles which cannot be discovered by the most careful tests. If because of such a hidden defect as a broken axle on a car an accident later occurs a passenger cannot recover any damages for injuries received as a result. Every passenger must make up his mind to meet those risks incident to the mode of travel he adopts, which cannot be avoided by the utmost degree of care and skill in the management of the means of conveyance.

In the actual operation of the transportation line it is the duty of the carrier to exercise the

highest degree of care and prudence in so managing and running its trains or other vehicles, as to prevent all injuries to the passengers which human forethought could avert. For a failure to exercise such care, the carrier will be liable to a passenger for resulting injuries. A carrier is also bound to employ and retain in its employ only competent and attentive servants, who are sufficiently skilled for the performance of the duties to which they may be assigned. Acting through its servants it must use the greatest care to protect its passengers from assaults or other improper interference by outsiders.

Every transportation company is bound to supply its vehicles with such accommodations as are necessary for the welfare and comfort of its patrons. Under this duty is included the obligation to furnish seats, adequate heat and light, and a proper number of employees. So also the carrier is bound to furnish adequate stations with safe platforms, properly lighted at night, and comfortable waiting rooms. There must also be reasonably safe approaches to the station.

**Duties of Passengers.** Every passenger must either exhibit a proper ticket whenever

demand by the conductor or else, if he has boarded the train without a ticket, he must be prepared to pay the regular fare plus a certain additional charge upon demand by the conductor. If a traveler purchases a ticket which is valid only on certain trains and at certain times, he is bound by those conditions, and cannot travel in any other way than the one specified. Thus a passenger holding a ticket reading from New York to Philadelphia cannot successfully claim the privilege of transportation on that ticket in the opposite direction. The phrase, frequently printed on coupon tickets or mileage books "void if detached" is a proper condition, and if violated, the conductor of the train may insist upon collecting another fare; and if that is not paid, he may stop the train in a suitable place and eject the passenger. The passenger must go peaceably and has no claim for damages if only necessary force be used. If a passenger pays his fare upon a train or street car, he is not bound to tender the exact amount, but is required to tender a sum not excessively large. Thus, if the fare from one station to another is \$1.35, it is unreasonable to require the conductor to change a twenty-dollar bill, although it would be perfectly proper to expect him to furnish change for five dollars.

**Regulations.** A passenger is bound to comply with the reasonable regulations of the carrier, and if he fails to do this, he may be removed from the train by the employees in charge. If the carrier does eject a passenger, it must sustain the reasonableness of the regulation alleged to have been violated, for, if such a regulation is not reasonable, the transportation company must pay damages to the passenger for his wrongful removal from the train. A regulation that any passenger carrying packages too large to be held in the lap must pay an extra fare is a reasonable regulation. So also is one forbidding passengers to ride on platforms of cars while the train is in motion.

**Arrival.** The carrier must allow the passenger upon arrival at his destination a reasonable time in which to leave the vehicle in which he has been traveling, without causing damages or injury to his person. Furthermore, the carrier must give notice to the passengers of their arrival at each station. This must usually be done in a railroad train by the announcement by an employee in a distinct and audible tone of the name of the place at which the stop is being made.

If a passenger attempts to jump on or off a moving train and is as a result injured, he cannot, except in a few special instances, recover damages from the railroad because by his own carelessness he has contributed to the accident which would not otherwise have occurred. For the same reason, a passenger cannot ordinarily recover damages from a transportation company if he is injured while riding on the platform of a car when there was sufficient room within.

### **The Transportation of Freight**

**Common Carriers.** At the present time practically all the freight which is to be carried any considerable distance is handled by large transportation companies—railroads on land and steamboat lines on water—which undertake as their business, in return for proper compensation, to transport from place to place the goods of all who apply. Such companies, usually known as common carriers, are bound to transport the goods of every person offering to pay the proper hire. In consideration of the public nature of their business, they enjoy certain peculiar advantages and in return are held to a high degree of responsibil-

ity for the goods of others entrusted to their care.

**Private Carriers.** Formerly goods were carried from place to place by individuals in their own wagons. Such persons did not profess to be ready to transport goods for every one, but only transacted such business when they were so inclined and as a result of special agreements. Such persons are denominated "private carriers." Their responsibilities are somewhat less than those of common carriers.

**Who are Common Carriers?** Any one who undertakes for hire or reward to transport for any one who chooses to employ him the goods of the kind which he holds himself out as ready to carry, is a common carrier. Thus, practically all railroad and steamship companies are common carriers. Ferrymen, canal boatmen, stage coach proprietors, wagon owners are common carriers when they hold themselves out as ready, as part of their business, to carry for hire the goods of all those who desire their services. Express companies are also common carriers.

**Delivery.** To impose upon the transportation company the liability of a common carrier, it is necessary that the goods to be transported

should be delivered to the carrier, or to one of its agents or employees authorized to receive goods, at a time when, and at a place where it is accustomed to accept freight. Thus, merchandise for transportation on a railroad should be delivered at a regular station, and not merely left alongside the track. Furthermore, the delivery must be with a direction for immediate transportation and not for the purpose of storage for a certain time or until the happening of a certain event. If, however, owing to a congestion of traffic, or other cause, the carrier does not at once commence the transportation of goods, yet its liability as a carrier commences at once if the goods were left with it for transportation as soon as possible. In every case the carrier has the right to require the prepayment of freight charges, if demanded. The carrier and its patron can make such special agreements as to them seem wise with regard to what constitutes a delivery of goods to the former, and such agreements are binding on both parties.

**Obligation to Accept Goods.** In general a carrier is bound to accept from every applicant and to promptly transport goods of the kind which it holds itself out as ready to

handle. On the other hand, the carrier may properly require the observance of suitable regulations as a prerequisite to the acceptance of the goods. For example, it may require that the articles shall be properly packed, or it may refuse to carry explosives, such as nitroglycerine, which might cause damage to its vehicles or to its passengers. Such regulations must be reasonable, and not adopted merely in order to injure a particular shipper. The carrier must make no discriminations in its treatment of the different shippers, but must give every one equal consideration and privileges. If a carrier refuses to perform its duty of transportation, either directly or indirectly, then the would-be shipper can recover adequate damages for the injury he has suffered.

**Duty to Furnish Sufficient Facilities.** Railroad and steamboat companies are given unusual powers by the State, and are, therefore, supposed to render a freight and passenger service adequate and suitable to the needs of the country through which their lines pass. On them is imposed the duty and responsibility of having and furnishing "sufficient facilities for the reasonably prompt transportation of goods tendered for carriage, and

they are liable for a failure to transport promptly, whether the failure is due to a want of facilities or to a captious refusal to carry." On the other hand, if there is a sudden and unusual increase or pressure of business arising from exceptional causes, then the carrier is not liable for the delay occasioned thereby, as it is only bound to provide facilities for such a volume of business as it might anticipate would be usually offered it. If from any such cause the carrier knows that it cannot transport the goods promptly it must inform the shippers of that fact before the goods are received as otherwise the liability for the delay in transportation will still rest on the carrier even though the cause be beyond its control.

**Duty to Transport with Reasonable Speed.** The carrier is bound to transport the goods and to deliver them with reasonable promptness. If it does not do so, it is liable to the owner for resulting damages. In determining whether the time required was reasonable many conditions, such as the weather, the season of the year, etc., must be considered in each particular case.

**Duty to Furnish Proper Vehicles.** The transportation company is bound to furnish

cars suitable for the transportation of the articles offered. Thus, it may properly carry coal and iron ore in open cars, although it must furnish box cars for grain, silk goods and general merchandise.

**Original Liability of the Carrier.** In the absence of a special contract limiting its liability, the carrier is practically an absolute insurer of the safe delivery of the goods, except from damages resulting from:—(1) What is known as an act of God, such as an earthquake or other violent force of nature; (2) Acts of a public enemy; (3) Acts of public authorities, such as the State or Federal officials; (4) Acts of the shipper; and (5) Causes connected with the inherent nature of the merchandise, such as the ordinary decay of fruit. It will be seen that the responsibility of the carrier is in the absence of a special contract very great. However, practically all transportation companies have adopted forms of contracts which greatly lessen their liabilities, and hence it is not necessary to enter more fully into their former greater responsibilities.

**Limitation of the Carrier's Liability.** In order to avoid the great liability to which it would otherwise be subjected, the carrier usu-

ally enters into special contracts with shippers, who are willing to agree to the proffered conditions. By these contracts, commonly known as bills of lading, which are made in consideration of a reduced rate offered to all those who will accept their terms, the liabilities of the carrier are lessened.

**Bill of Lading.** The bill of lading which is given to the shipper when he delivers the goods to the transportation company is an acknowledgment on the part of the carrier that it has received the goods as described therein, and an agreement on its part to deliver them to the person to whom they are directed, commonly known as the consignee. As a receipt for the goods the bill of lading is not absolutely binding as between the shipper and the carrier, for proper evidence may be presented at any time to show that it is not correct. The bill of lading is not only a receipt for the goods, but also a contract containing the conditions on which the carrier agrees to undertake the transportation of the articles committed to its care and the delivery of them to the proper person. The conditions limiting the carrier's liability must be clearly and legibly set forth in the bill of lading, which must be accepted by the shipper

when he delivers the goods. These conditions are, in the absence of fraud, binding on the shipper even although he has never read them as he is presumed to have assented to them when he accepted the contract. Sometimes shipping receipts are issued in place of formal bills of lading. They are briefer documents which may be later exchanged for regular bills, if the shipper so desires. It is customary for the shipper to at once forward the bill of lading or shipping receipt to the consignee of the goods.

**Bill of Lading as Evidence of Ownership.** The bill of lading is regarded in commerce as actually representing the goods covered by it. It may be bought and sold and its transfer by indorsement passes the ownership of the goods described in it just as effectually as if the articles had been actually handed over by the seller to the buyer. In this way bills of lading are used as security for loans made by banks and others.

**Uniform Bill of Lading.** Most of the transportation companies in this country have adopted a uniform bill of lading. This provides in detail for a limitation of the carrier's liability. Among other conditions it is stated

that the carrier will not be responsible for losses caused by floods, riots, fires, stoppage of labor, changes in weather. Further clauses provide that claims for damage must be made within a certain specified number of days, that property must be removed from the station of destination within a reasonable time, etc.

**Stoppage in Transit.** If the seller of goods while they are being transported by a carrier discovers that the person to whom they are directed has become insolvent and cannot pay for the goods, he still has one method of avoiding loss. Under such circumstances he may order the carrier to return the goods to him and not to deliver them to the original consignee. This right is supported by common justice and is obviously a great protection to merchants. If, prior to the notice to the carrier, the consignee has transferred the bill of lading to an innocent purchaser, the right of the original shipper to stoppage in transit of the goods is defeated, and the carrier must deliver to the holder of the bill of lading.

**When the Liability of the Transportation Company Ceases.** The liability of the carrier, as such, ends with the delivery of the goods to the consignee or owner, or with their deposit

in a reasonably safe warehouse after the consignee has had a reasonable allowance of time in which to call for and remove them. There is an absolute duty resting upon the carrier to deliver the goods to the person to whom they are directed, or to some one presenting proper authority from him. This authority may be given either by the transfer of the bill of lading by indorsement thereon to another person, or by the delivery of the original bill of lading to the agent of the consignee with proper evidence of his authority to act as agent. If the carrier delivers the goods to the wrong person, he is liable to the true owner for the amount of their value. The real owner of the goods has the right to demand them from the carrier at any time, even if they are directed to some other person, and the responsibility rests upon the carrier of deciding whether any claimant is the true owner of the goods.

### **Grade Crossings**

In the United States it is still very customary for railroads to cross highways at grade. Accidents occur frequently at such crossings and it is important to know who is legally responsible for the resulting injuries. There

are certain duties and liabilities fixed by law which must be observed by those who are proceeding on the highways as well as by those who are in charge of the trains on the tracks.

**Duty of the Railroad Company.** The railroad company is bound to give adequate notice of the approach of every train which is about to cross a public road. This warning may be given by sounding a whistle, by ringing a bell, by safety gates or by the personal efforts of a watchman. If the employees of the railroad neglect to give suitable warning by one of the above methods, then the company must pay damages for any injuries or deaths which result to persons traveling on the highway, provided always that such persons have observed all those precautions set forth below which in the eye of the law should be taken by any one about to encounter the dangers of crossing a railroad track.

**"Stop, Look and Listen."** In Pennsylvania the courts have decided that a very high degree of care and watchfulness is incumbent upon everyone under such circumstances, and certain additional precautions must also be observed in those cases where elements of extreme danger exist. It is the duty of every per-

son about to cross a railroad track to stop, look and listen for approaching trains. If he fails to do this and is injured by a passing train, it will be considered that this carelessness has, at least in part, caused the accident and he is absolutely barred from recovering damages from the railroad company, even if he can conclusively prove that no adequate warning was given of the approach of the train. In short, it may be stated that no one can recover damages for an injury resulting from a grade crossing accident, no matter how negligent the railroad employees may have been, unless he can clearly establish the fact that he complied fully with the requirement that he must "stop, look and listen" before going on the tracks. The traveler must come to a full stop, even if he is riding on a bicycle or a wagon, and look and listen with an intelligent interest for approaching trains. Even if a flagman, employed by the railroad company, signals the traveler to come on, yet the latter must still exercise the same personal caution and must stop, look and listen. The same rule applies even if the safety gates at a crossing are open, thus giving an apparent assurance that no train is approaching.

If a traveler is riding in a carriage as the guest of another person, still he must himself

keep a look-out for trains and also request the driver of the vehicle to stop, look and listen before attempting to cross the tracks.

**Duties of Driver.** The driver of a wagon is not necessarily required to leave his seat and lead his horses across the track unless it is apparent from the nature of the crossing that a reasonably prudent man would take such a precaution.

**Additional Precautions.** Every traveler on a highway before crossing a railroad track must not only "stop, look and listen"; but he must also continue to use every reasonable precaution which will enable him to avoid the danger of being run down by an approaching train. If a suit to recover damages is brought against a railroad company, it is the province of the Judge, aided by a jury, to decide whether a person who has been injured, has complied with these requirements imposed by law.

**Injuries to Trespassers.** No person, except of course an employee of the company, has any rights on a railroad track except at public or private crossings. Any person on a track except at a crossing is a trespasser, and the railroad is not liable in damages for his injury or death, if

he is struck by a train. The railroad company must not injure even a trespasser wantonly, but it has the right to assume that such persons will leave the track upon the approach of a train, and it is not, therefore, bound to make immediate efforts to stop. On the other hand if a young child is playing on the track the engineer of the train must stop at once, for it cannot be assumed as a matter of course that such an infant will have sufficient sense to get out of the way of a moving train. In short, the rule as to trespassers may be briefly stated by saying that if one is seen on the tracks, the engineer of an approaching train must give a proper warning and if it is probable that the signal will not be heeded for any cause, then measures must be taken to stop the train.

**Live Stock.** In Pennsylvania a railroad company is not required to fence its tracks except in special localities, and an owner of live stock cannot recover damages for the death of such animals as he has allowed to wander upon the tracks.

## Chapter XIV

### MASTER AND SERVANT

A "master" is one who directs the work of another, and controls the result of the latter's work. A "servant" is one who is employed to render certain services to another, and who is entirely under the direction of the one he serves. One who serves another, but who does so in the course of an independent occupation, and represents his employer only in the result of his work, and not with regard to the means employed, is a "contractor," and not a servant. The relation of master and servant is usually held to exist where the employer has the right to select the employee, has the right to discharge him, and to direct what work shall be done, and in what manner it is to be performed.

**The Contract of Service.** The basis of this relationship is a contract, by which the master binds himself to pay a certain sum in return for services rendered. If the contract of hire is to cover a definite period of time, the master must furnish the servant with work during that time, and cannot refuse to pay the servant

his wages merely because he did not provide him with work to do.

Ordinarily a contract of hire, which states no definite period of service, may be terminated at any time by either party upon giving due notice to the other. When the contract names a certain time of service, and the servant continues to work for the master after the time of service has elapsed, without any new agreement, it is presumed that the contract has been renewed on the same terms and for a similar period as the original contract.

Where no wages are definitely stated a servant is entitled to such an amount as his services are reasonably worth.

Any act by the master which prevents the servant performing the duties for which he is hired, will justify the servant in abandoning the contract, and so will also a refusal by the master to pay the servant his wages, or an attempt by the master to reduce the wages.

A master may discharge his servant for failure to perform the duties for which he is engaged, or for insolence or disrespect to the master, or for acting in a manner injurious to the master's interests, or for misconduct, or for incompetency, or for disobedience in performing his duties. In case of illness of the servant

the question of the right of the master to discharge depends upon the duration and severity of the illness.

**Liability of the Master.** A master is bound to use ordinary and reasonable care in protecting his servants from injury in the course of their employment, and he will be responsible for injuries caused to the servant unless the latter assumes the risk himself, or contributes to the accident by his own acts.

It is the duty of the master to provide his servant with a safe place in which to work, proper appliances for tools, proper fellow servants, and to warn him of all hidden dangers or defects which may in any way concern the servant.

The master is liable for all injuries caused to third persons by the wilful or negligent act of his servant, provided the act which results in injury is done while the servant is performing his duties in his master's service. The master is not responsible for the wrongful acts of a servant when the servant is acting outside the scope of his master's employment.

Whenever the servant is obeying an express command or acting with the assent of the master, he is regarded as standing in the place of

the master, and the master is responsible for his acts. Thus, a coachman, who by his negligence in driving his master's horses while on his master's business, injures a pedestrian, makes his master liable to the injured person for the damage sustained, but if a house servant, who had nothing to do with the stable, should drive his master's horses on his own business, he would not make his master liable for any injuries which he might inflict, for the reason that his use of the horses was wholly without the scope of his employment.

**Fellow Servants.** Although a master is responsible to third parties for an injury done to them by his servant, while the latter is acting within the limits of his employment, the master is not necessarily liable for injuries one servant inflicts upon another servant while on the master's business. The rule in such cases is that where a master has used due diligence in the selection of competent and trusty servants, and has furnished them with suitable means to perform the work for which he employs them, he is not answerable to one of them for any injury received by him as a result of the carelessness of another, when both are employed in the same service.

**Interference by Third Persons.** A third person has no right to interfere with the relationship of master and servant, and any one who endeavors to induce the servant to break his contract of employment with his master, makes himself liable to an action for damages on the master's part for the injury caused him by the loss of his servant.

**Domestic Servants.** Domestic servants are usually employed by the week. If either the master or the servant desires for any reason to terminate the contract of employment, he must give one full week's notice of such an intention. If, however, the servant has been employed by the month, then one month's notice is necessary before the employment can be terminated.

## Chapter XV

### DEEDS AND MORTGAGES

#### Deeds

**The Deed.** When one person desires to sell or to transfer any land or buildings to another, he gives to the buyer, usually known as the grantee, a deed, or instrument in writing setting forth that the seller, or grantor, has conveyed to the grantee the land described in the deed.

Great care must be taken to express in the deed the exact meaning of the parties to the transaction. The language used in the instrument is frequently technical and, therefore, no one should attempt to prepare a deed unless he has had the necessary experience to enable him to make use of the proper terms and phrases. There are, however, a few simple precautions which should be observed by every grantor or grantee of a deed no matter what lawyer or conveyancer has prepared the paper.

**Description of Property.** As the deed is almost the only evidence of ownership which the purchaser will have to enable him to show his right to the property, he should see to it that the description in the deed corresponds exactly with that of the property which he thinks he is purchasing. Usually the description is given by stating the exact length from a given point and the exact compass direction of each of the boundary lines. Frequently a statement is made of the approximate number of acres contained in the property sought to be conveyed.

**The Parties.** The purchaser of land should satisfy himself that the grantor is not only legally competent (i.e., of full age, sound mind, etc.) to convey the land, but also that as a matter of fact he actually owns it at the time the transaction is completed. Furthermore, the purchaser should make sure that his own name is fully and exactly inserted in the deed as the grantee of the land. In order to give him full title to the property the words "and his heirs" should follow the name of the purchaser. Otherwise, he will only secure the right to live on the property during his own life without any power to convey it by deed to any one else.

It is, therefore, of the utmost importance that these words of inheritance "his heirs" should follow the name of the grantee in that clause of the deed which recites the conveyance to him.

**Consideration.** The amount paid for the property, or some lesser sum should be mentioned in the body of the deed as the consideration for the transfer of the land. The deed should also contain an acknowledgment by the grantor that he has received that amount of money. Even when the land is given by one person to another, it is the usual practice to say in the deed that one dollar has been paid for it, and that the receipt of that amount is acknowledged by the seller.

**Warranty.** Deeds frequently contain a warranty or statement by the grantor in technical language that he is the true owner of the property, that he has the right to sell it and that he and his heirs will pay to the purchaser any loss which may ensue if there is any other person who has any superior rights to the land.

**Execution.** The deed should be signed and sealed by the grantor in the presence of two witnesses, who should affix their names in the

proper place. If the grantor is a married man or woman the wife or husband should also sign the deed. After the deed has been signed it should be acknowledged before a notary public, a justice of the peace, or other officer competent to administer oaths. The acknowledgment consists in a declaration by the grantor or grantors that the transaction is their own free act and deed. If a corporation is the grantor, care should be taken to see that the instrument is properly signed so as to indicate that it is made by a corporation, and not by the individual officer who happens to sign the deed for the corporation.

**Recording.** As soon as a deed has been signed, sealed and acknowledged it should be delivered to the grantee, or his agent. The duty then devolves upon him to see to it that the deed is delivered to the Recorder of Deeds for the county in which the land lies, in order that a proper entry of the transaction may be made in the public archives. The purpose of this record is to give notice to the world that the former owner of the land has parted with all his interest in it to the purchaser, and therefore has no right to sell the same property to anyone else. As between the parties to the

deed it is valid without being recorded, but in order to fully protect the purchaser against a subsequent fraudulent sale of the property, it is most necessary that the instrument should immediately be presented to the Recorder of Deeds for proper record. According to Statute this must be done immediately in the City of Philadelphia, but in the rest of the State of Pennsylvania it need only be done within ninety days from the date of the execution of the deed.

### **Mortgages**

**The Mortgage.** It frequently happens that the owner of land desires to borrow money. In order to do this he offers his real estate as security for a loan. If this is deemed sufficient by a person who has money to lend, the two parties enter into a written agreement whereby the one transfers his land to the other as a pledge for the repayment of a loan, and with an express agreement that upon the repayment of the money at the proper time the deed will become void. Such an agreement is called a mortgage. It may be more accurately described by an examination of a specific case. Suppose Brown owns a piece of land worth about sixteen hundred dollars and wishes to

borrow ten hundred dollars. He goes to Smith, who agrees to lend him the money. In order to secure its repayment Brown conveys to Smith, by a written instrument, the title to his property. The conveyance has, however, inserted in it a provision that upon the repayment of the amount of the loan with interest at a specified rate, the deed will become null and void and the property revert in Brown. Such a conveyance, which contains a clause making it void upon the repayment at the specified time, is called a mortgage. The person who provisionally conveys away his land in return for the loan is called the mortgagor. The person to whom the conveyance is made, and who lends the money, is known as the mortgagee.

In addition to promising to repay the amount of the loan the mortgagor agrees to pay interest on it at a certain specified rate set forth in the instrument at regular, usually semi-annual, periods.

**Essentials of a Valid Mortgage.** There are certain requirements which must be fulfilled to constitute a valid mortgage. The parties thereto must be legally capable of making such a contract. There must be a good and sufficient

consideration for the making of the mortgage. Most mortgages are, as has been explained, made as a security for the payment of a debt which already existed, though there may also be other considerations. Under certain circumstances a valid mortgage may be made which will protect future, as well as past, loans, but under such circumstances the instrument must be very carefully drawn so as to indicate exactly what future advances will be covered by it. Every mortgage must be properly signed and acknowledged before a notary public or other competent officer, such as a justice of the peace. When a mortgage is made by a married woman her husband must join in making it, i. e., he must sign and acknowledge it with her.

**The Bond.** In addition to the mortgage the mortgagor usually executes a formal bond in which he promises to repay twice the amount of the loan.

**Recording.** In order to make absolutely certain of getting good title the mortgagee should have his mortgage recorded immediately upon its delivery to him. This is done by taking the instrument to the office of the "Recorder of Deeds" for the County in which the land covered by the mortgage is located.

The Recorder then has the mortgage copied in the public records, so that if the same mortgagor should later attempt to borrow more money on the same premises, the second lender would have notice that the first mortgagee had a prior claim. According to Statute, mortgages must be recorded within six months, but the only safe course is to have the matter attended to as soon as the mortgage is signed, acknowledged and delivered to the mortgagee.

**Rights and Duties of the Mortgagor.** The general custom is for the mortgagor to continue to dwell on, or to use for his own purposes the mortgaged property. If this happens to be rented to a tenant, the rent is still payable to the mortgagor. It is his duty to pay the taxes on the property. There is frequently inserted in the mortgage itself a clause to the effect that the mortgagor must pay the taxes and deliver the tax receipts to the mortgagee every year on or before a certain date. It is provided that a violation of this condition will render the principal of the mortgage payable at once.

**Foreclosure and "Equity of Redemption."** If the money loaned is not repaid at the proper

time then the mortgagee proceeds to "foreclose" the mortgage, or, in other words, to take the necessary legal steps before the proper Court to secure possession of the property. In the absence of a special clause in the contract, he cannot do this within a year after the non-payment of the money, but it is very customary to insert a clause in the mortgage giving him the right to proceed at any time more than thirty days from the time of the breach. Within this limited time the mortgagor still has the right to pay the loan and to retain the property. This privilege is technically called his "equity of redemption," and may be sold as it has a decided commercial value whenever the land covered by the mortgage is worth more than the amount of the mortgage. If, however, the mortgagor does not avail himself of this right, then the property is sold at a sheriff's sale for the benefit of the mortgagee.

**Satisfaction.** If, on the other hand, the mortgagor pays off the mortgage and fulfills all the other conditions either when the mortgage falls due, or within the limit fixed by law, or by the contract for the redemption of the equity, then the provisional clause of the mortgage comes into effect and the entire title re-

vests in the original owner, or, in other words, he again becomes the owner absolutely of the entire property. It is then the duty of the mortgagee to "satisfy" the mortgage on the public records, which amounts to an official declaration that the entire debt has been paid and the transaction concluded.

**Assignments.** It sometimes occurs that a person who has lent money on a mortgage wishes to secure a repayment of the amount of the loan prior to the time fixed in the mortgage. In such a case he seeks out some one who is willing to lend the money on the security offered and then assigns or transfers the mortgage to him. The result of this transaction is that the new lender steps into the place of the former mortgagee, and assumes all his rights and responsibilities. The original mortgagee, who has been paid his money, retires from the transaction.

In the same way the original mortgagor may sell his land subject to the mortgage. In such a case, however, he still remains liable for the payment of the debt because of the fact that he has given his personal bond to the mortgagee at the time when the transaction was originally undertaken.

**Fire Insurance.** Every mortgagee ought to make absolutely certain that all buildings on the premises are fully insured and that the insurance is made payable to him. There is usually a clause in the mortgage requiring the mortgagor to attend to this and to pay the premiums, but the mortgagee should assure himself that adequate insurance has actually been taken out and the policies delivered to him.

## Chapter XVI

### LANDLORD AND TENANT

The relation of landlord and tenant is one of the most common in everyday life. The ordinary rights and responsibilities which result from this relation will be discussed here.

#### The Incidents of the Relation

**The Lease.** A "lease" is an agreement by which the relation of landlord and tenant is established. Leases for shorter terms than three years may be either in writing or oral. It is, however, most desirable that all leases should be in writing, in order to avoid subsequent controversies with regard to the conditions of the lease. The length of time covered by the lease is technically called "the term." It is specifically provided by statute that leases for a longer term than three years must be in writing to be valid. Leases may be made for one day, one month or longer or shorter terms

as may best suit the convenience of the parties. Continuing leases lasting from month to month, or from year to year, and determinable only on suitable notice by either party may also be made. In the case of leases from year to year three months' notice is usually required to terminate the lease.

**The Parties.** The owner of property, who by a lease, grants its absolute use to another person for a longer or a shorter time, as the case may be, is called the "landlord" or "lessor." The person who takes the property in accordance with the conditions of the lease, is designated as the "tenant" or "lessee."

If a tenant grants to a third party all his rights and privileges in the leased property that person is called the "assignee" of the lease. If, however, the tenant transfers only part of the premises, or all of the premises for only part of the term, then the person to whom the transfer is made, is called the "sub-tenant." It is sometimes important to know the difference between a sub-tenant and an assignee of a lease, as their rights and liabilities are different.

In order to make an absolutely binding lease the landlord must be a person who is capable of transferring property, and the ten-

ant must be a person who is capable of receiving it. For example, leases executed for lunatics, intoxicated persons and minors are voidable, i. e., they may be set aside at the request of such parties. Leases executed by married women without the consent of their husbands are void. Furthermore, the person executing a lease, if it is to be valid, must always be in possession of the property.

**The Making of a Lease.** Leases are generally made in duplicate, so that both the landlord and the tenant may have a copy. If no date is set forth in the lease, the term will be considered to commence on the day on which the delivery is made to the tenant. It is very advisable that the amount and manner of payment of the rent should be clearly expressed in the instrument. That the premises covered by the lease should be accurately described is most essential, as otherwise it may be void for uncertainty. Both parties to the lease should sign and seal both copies of it. A mere scroll made with a pen is a sufficient seal in Pennsylvania. It is desirable to have the execution of the lease witnessed by one person. The original lease should be delivered to the tenant in person, or to some one in his behalf. When a

married woman makes a lease the husband should join in making it. Printed forms of leases, containing the usual conditions, etc., may be obtained from the large stationers.

**Agents.** An agent may make a lease, but the tenant should always ascertain that he has sufficient authority to perform such an act, and that he follows his authority strictly. Furthermore, the agent must act in the name of the principal and not in his own, i. e., if the agent's name is Amos Judd and the owner's name is Richard Doe the former should sign the lease Richard Doe by Amos Judd, Agent. If the lease to be made by the agent is to be a written one and under seal, then the authority to make it must also be in writing and under seal. An agent cannot delegate his authority to another unless he has special authority so to do.

**Rent.** The amount of rent and the time when it is payable should be clearly set forth in the lease. In the absence of any specific agreement to the contrary, it is the duty of the tenant, on the day on which the rent falls due, to seek out the landlord and make payment to him. The landlord is not obliged to send the tenant any notice that the rent is due. If the

rent is not paid on the proper day, then interest on the amount may be collected by the landlord from that time onwards at the rate of six per cent. per year.

**Taxes.** In all parts of Pennsylvania the tenant is justified in paying any taxes that have been assessed during his tenancy on the premises covered by the lease. He is not required to pay such taxes, but if he does, he may deduct the amount from the rent due to the landlord.

**Appurtenant Rights.** A "right of way" is a right which is attached to a particular piece of land, which gives the owner the right to pass over his neighbor's property for certain purposes, as, for example, to reach a public road, or a well. When property is leased any rights of way which belong to the landlord as owner of the premises are transmitted to the tenant, who can use them to the same extent, and in the same manner as the landlord. The owner of a property through which such a way runs, has a right to build over the way provided that in so doing he does not obstruct the passage.

A similar right which passes with the property to the tenant is the right of support which

one person has either in the building or wall on his neighbor's ground.<sup>1</sup> No one has a right to dig away the earth on his own premises in such a way as to damage the land of his neighbor. This right to the support of his ground is one which goes to the tenant as the result of a lease.

**Improvements.** While a tenant is in possession of the property it often happens that he makes improvements and additions to it. It becomes important at the conclusion of the lease to determine whether these improvements belong to the landlord or to the tenant in the absence of any specific agreement between the parties. As a general rule all appliances inserted for the purpose of carrying on the trade or occupation of the tenant may be removed by the tenant. Thus, for example, a soda-water fountain may be taken away by him. To determine whether other improvements are the property of the landlord or of the tenant, it is necessary to consider the intention of the tenant at the time the fixture, which is the technical name for such an appliance, was put into position. If the tenant's "intention was to make a permanent improvement"

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<sup>1</sup> The question of party walls is discussed in Chapter XVIII.

then he has no right to remove the property. This intention of the tenant is deduced by the courts from various facts, such as the manner in which the article is attached to the land or house, and the evident purpose of its attachment. The secret and undisclosed intention of the tenant is immaterial. Great stress is laid on evidence which tends to show whether or not the article is especially adapted for or necessary to use on the real estate to which it is affixed. If it is, then the property has passed to the landlord, and the tenant has no right to remove it. If, on the other hand, the facts in the case indicate that the tenant had no legal intention of permanently attaching his article to the leased property, and if on examination of the article, it is shown that its removal would not render the real estate useless for the purpose to which it is devoted, then the tenant may remove his property provided always that he does so prior to the termination of his lease. In general the disposition of the courts is to regard favorably the tenant's rights with regard to claims for articles attached to the property during the continuance of the tenancy. No article can however be removed if its removal will seriously damage the real estate of the landlord.

**Wrongs to the Landlord and His Remedies**

We will now consider some of the wrongs which may be done to the landlord by the tenant and the former's remedies.

**Waste.** A tenant has no right to destroy the property leased to him. For example, he must not pull down or injure a house, or lay low the trees or fences. He has not even the privilege of changing the general nature of the property without the permission of the landlord. Thus, he must not convert a meadow into an orchard nor a corn mill into an electric lighting plant. Furthermore, the tenant, unless he has inserted special provisions in the lease, is not permitted to passively allow the property to fall into dilapidation. In short, the tenant may do nothing, either by action or by lack of action, which will tend to permanently injure the property rented to him. Such injury, whether caused by commission of actual destruction, or by the lack of suitable care, is called "waste." For this the landlord may recover damages by an action at law.

**Non-Payment of Rent.** Another and a very common wrong which a tenant may do to

the landlord is to fail to pay his rent in the amount and at the times specified in the lease. For this wrong the law affords several remedies. Most of them are too technical to be discussed here, but the most common form of securing payment may be briefly explained as follows: It frequently happens that although a tenant refuses to pay his rent, yet he has sufficient personal property upon the premises to more than cover the amount of the overdue rent. In such a case the landlord, provided the amount of the rent and the times at which it is payable are fixed with certainty in the lease, may enter upon the premises and seize a sufficient quantity of the tenant's personal property to make up the amount of the rent. Such a proceeding is termed a "distress" and the landlord is said to have distrained on the tenant's goods. It should be noted that the distress must be made after the rent is fully due and in the day time, between sunrise and sunset. It is generally customary to employ a constable to make a distress. For this he receives certain fees. In certain cases a distress may be made at other times than those set forth, but professional advice should then be sought as the details of the proceedings are very complicated.

The tenant has the right, unless he has ex-

pressly waived it, to retain certain goods which cannot be taken by the landlord as a part of the distress. The most important articles covered by this rule are the following:—

All wearing apparel of the tenant and his family.

All bibles and school books in use in his family.

Property to the value of three hundred dollars.

Things annexed to the land, as windows, doors, mantle-pieces, mirrors, flowers, shrubs, trees, etc.

Things in actual use by a tenant, as a horse on which he is riding, or an axe in his hand.

Things delivered to a tenant exercising a public trade for the purpose of being manufactured, carried, repaired, etc. This includes for example, cloth at a tailor's, a horse at a blacksmith's shop, goods at a railway warehouse, and the property of a boarder at an inn or boarding house.

Although it is true that the tenant has the technical right to all the above exemptions from any distress, yet almost all leases contain waivers of exemptions. If a tenant waives (i. e., gives up) his right to an exemption by the terms of the lease, then he cannot afterwards

complain if his property is seized on a distress. The tenant, however, cannot by his waiver enable the landlord to seize on a distress the goods of others left for the purposes above indicated.

Certain other articles, such as pianos, sewing machines and typewriters, when rented to the tenant by their owners, cannot be seized as part of a distress under any circumstances, provided that their owners have given notice to the landlord that the articles are not the property of the tenant, but are merely hired or leased to him by the owners.

A landlord must never make a distress at any time on Sunday, nor on any day between sunset and sunrise; nor may he break open an outer door or window in order to make a distress; nor may the landlord seize under his distress more property than is reasonably sufficient to secure the amount of the rent.

After the distress has been made the goods are set aside for five days and then after appraisal by three proper persons, are removed to a suitable place unless the tenant agrees that they shall remain on the premises. Six days later, after advertisement according to law, the goods are sold and the landlord takes his rent from the proceeds.

### **Rights of the Landlord**

**The Termination of the Lease.** At the end of the term or time for which the premises are rented, the tenant is bound to deliver up the property to the landlord peaceably and promptly. If he does not do so he has wronged the landlord. It should be noted here that when the lease is "from year to year" then either the landlord upon giving to the tenant three months' notice to quit, or the tenant upon giving an equally long notice of his intention to surrender (i. e., give up) the premises, may terminate the relation at the end of the year. Such notices should be so clearly expressed that there can be no doubt about their meaning. A lease may also be terminated if the tenant is dispossessed by a person who has a better right to the property than the landlord; or by the violation of any of the conditions specifically set forth in the lease. In any such case, the aggrieved party may recover sufficient damages for the breach of the contract to recompense him for the injury which he has suffered. In various other ways also the relation of landlord and tenant may be ended. Only the more common have been mentioned.

**Re-entry.** If a lease is terminated by any one of the methods above mentioned, or by certain other methods the landlord, provided there has been inserted in the lease a right of re-entry, may enter upon the property and take possession. This is generally done through the agency of a constable. But in re-entering the property the landlord, or his agent, must use only peaceful means, for if he enters "with violence and a strong hand" or "other circumstances of terror" then he may be fined or imprisoned. It is true that in this way he may secure the possession of the premises, but he does so at the risk of severe punishment. It is therefore very inadvisable for a landlord to attempt to re-enter unless the tenant is willing to yield up possession peaceably. He should on the other hand commence a suitable legal action.

**Ejectment.** Instead of entering himself the landlord may start a suit at law called "ejectment" by which he will finally secure possession of the property. He may also institute various other legal proceedings, too technical to be treated here, by which his property will be eventually restored to him by due process of law.

### **Wrongs Against the Tenant**

**Forcible Entry.** The landlord, during the term of the lease, has no more right than a stranger to enter upon the leased premises except for the following purposes:—

To demand the rent due.

To make a distress for overdue rent as explained in the early portion of this chapter.

To examine the property if he has reason to believe the tenant has been cutting down trees, doing other irreparable injuries to the land or buildings, or committing any other act of waste.

To cut down trees, to excavate minerals or to visit special portions of the premises, provided these rights have been expressly reserved in the lease.

If the landlord goes upon the rented property without the permission of the tenant for any other purpose than those above mentioned, he may be treated as an ordinary trespasser. He is also guilty of the wrong of forcible entry, and the tenant may claim that he has been evicted and that the lease has been put an end to with the consequence that he is no longer liable for the rent. He may however if he prefers, sue him for trespass and recover damages as if he were a mere stranger.

### **Various Incidents of the Relation of Landlord and Tenant**

**Condition of the Premises.** The tenant should satisfy himself before signing the lease that the premises are suitable for the use to which he proposes to put them, and that they are in a satisfactory condition for his occupancy, for upon him rests the sole responsibility of finding out the present condition of the property. The landlord is not bound to warn him against any defects which could be ascertained by reasonable inquiry on the part of the tenant. On the other hand, the landlord is bound to warn the would-be tenant against dangers which cannot be discovered by him, as, for example, in a case where the house has been previously occupied by persons suffering from an infectious or contagious disease, and no proper disinfection had been subsequently made. Even when a house is in a ruinous and unsafe condition, there is no implied duty resting on the landlord to inform a proposed tenant that it is unfit for habitation. But on the other hand, when a tenant is induced to take a lease through fraudulent misrepresentations of the landlord, he, upon discovering the fraud, may terminate the lease and withdraw from the

premises without any liability for future payment of rent. In the absence of an express agreement embodied in the lease, there is no implied duty resting on the landlord to keep the premises fit for habitation during the continuance of the tenancy. Even if the buildings are destroyed by fire or other accident, the landlord is not bound to re-build them.

**Repairs.** The tenant, even in the absence of an express provision in the lease, is required to make fair and ordinary repairs, such as putting in doors and windows which may have been broken, and the absence of which would cause waste and decay of the premises. It is also his duty to remove obstructions from the drains, water-pipes and the like, and to keep up the fences. If the property rented to him is farm land, he is bound to use it in a husbandlike manner according to the usual custom of the community.

The tenant however is not bound to make unusual repairs unless there is an express agreement in the lease that he will return the property in the same condition as that in which it was received by him, ordinary wear and tear only excepted. Usually however there is such a clause in the lease. If there is, then the land-

lord may demand the return of the premises to him in the same condition as when they were received, even if the buildings have in the meantime been entirely or partially destroyed by fire or other cause. In order to guard against this possibility the tenant should see to it that, if he is under the lease responsible for delivering up the premises "in like good order and condition as they now are," the following words are also inserted "ordinary wear and tear and casualties by fire and other unavoidable accident only excepted," or their equivalent. Even if there is such a clause in the lease and the premises are consumed by fire or otherwise destroyed, still the tenant must continue to pay rent and cannot compel the landlord to rebuild unless the latter has specifically agreed to do so.

**Express Covenants.** Frequently there are certain additional agreements or covenants expressed in the lease, as for example, an agreement by the landlord to renew the lease for a certain time on the request of a tenant, or a stipulation that the tenant may at the close of his tenancy purchase the property at a certain given price, or that, if the property is destroyed by fire, the landlord will rebuild upon the de-

mand of the tenant. Frequently the tenant on his part agrees expressly to pay all taxes, water, electric light or gas bills. He may also stipulate that he will not assign or sub-let the premises without the consent of the landlord, or that he will not use the property for any except a definite, specified purpose. He may also covenant to insure the premises for the benefit of the landlord. These are familiar examples of a large number of express covenants which may be inserted in the lease at the will of the grantor. If such covenants are inserted in the lease, great care should be taken to see that the language used exactly expresses the thought and desires of both parties to the contract.

## Chapter XVII

### GROUND RENTS

**The Creation of Ground Rents.** What are commonly called "ground rents" are practically only to be found in this country in the State of Pennsylvania. When the owner of the land in old days conveyed his land to another the buyer frequently contracted that he and his heirs would pay to the seller and his heirs an annual rental on the land conveyed. An instance of this would be where A., owning a piece of land, conveyed the title to the land itself to B., but stipulated in the deed of conveyance that B. and his heirs, including all those who should thereafter acquire title to that particular piece of land through B., should pay to A. and his heirs an annual rental for the land which A. conveyed to B. B. would then actually be the absolute owner of the land, but A. would own a rent arising out of it. This rent, inasmuch as it arose directly out of the transfer of real estate, was always known as a "ground rent." A great many of these rents

existed in the early days of the state's history, but they are gradually disappearing, through lapses in payment, releases by the owner or extinguishment.

The chief thing to be noted about ground rents is that by means of them two distinct and yet absolute estates exist in the same piece of land at the same time. The owner of the ground rent has a title entirely distinct from that of the owner of the ground itself, and a title moreover which he may devise in his will, or give away in his lifetime as absolutely as if he owned the actual real estate.

Ground rents in Pennsylvania have always been regarded as a species of real estate.

**Division of Land.** Where land, which is burdened with a ground rent, is divided among several owners, the ground rent must be paid proportionately by the several owners of the land so burdened with the rent. When the same person comes into possession of both the land and the ground rent which is owed from the land, the ground rent is said to be merged, and disappears, as otherwise the owner would be merely paying rent to himself.

**"Redeemable" and "Irredeemable."** Some ground rents are by the terms of the original

deeds redeemable. This means that the owner of the land has the privilege of at any time paying to the owner of the ground rent a fixed principal sum instead of the annual interest payments. Irredeemable ground rents cannot be paid off without the consent of the owner of the rent.

A few irredeemable ground rents still exist in Pennsylvania, but the Legislature has prohibited the creation of any new or perpetual rents of this kind.

Ordinarily, if a ground rent has not been paid by the owner of the land for a period of twenty years, nor demanded by the owner of the ground rent in such land, nor by his heirs, it is presumed that the ground rent has been released or put an end to. This presumption is now held by an act of the Legislature to be final.

## Chapter XVIII

### PARTY WALLS

A "party wall" is a wall built on the division line between two properties owned by different persons and which may be legally used as a support for buildings of either or both owners.

**The Right to Build the Wall.** It frequently happens that the owner of one of two unoccupied lots desires to erect a building on his land. In such a case, in the cities of Philadelphia and Pittsburg, as well as in certain other cities, he may erect a wall along the division line between his property and the adjoining one. The wall thus rests equally on the land of each owner, and may be used to support buildings on both properties. The original builder pays the entire cost of the construction of the wall, but when the adjoining owner undertakes to use the wall to support his building, then he must pay a part of the original expense. The exact share to be paid by him is

determined by the amount of the wall which he uses.

**Construction.** The details of the construction of a party wall are usually determined by municipal ordinances, which set forth in detail the width of the wall for different heights and different materials, such as stone or brick. In general it may be stated that the party wall must be built in a solid manner throughout and must not contain openings of any kind for windows or for any other purpose. If windows have been constructed by the original builder, the owner of the adjoining lot can nevertheless close these completely at any time, if he desires to use the wall for the support of his own building. This rule does not, of course, apply to other than party walls.

**Increase in Height.** If the second builder wishes to erect a higher building than the one constructed on the adjoining owner's land, he may increase the party wall the necessary amount without rebuilding it, provided always that it is of sufficient strength to stand the additional strains. In such a case, of course, if the original builder desired to increase the height of his building, he would then have to

pay his share of the cost of the additional height added by the second builder to the original wall.

**Right of Compensation.** The right to receive a proportionate payment for the share of a previously constructed wall may be insisted upon before the latter builder breaks into the wall, or uses it in any way, but cannot be demanded prior to the time when the second builder actually proposes to commence work on his building. It should, however, be noted that the right to compensation is a personal liability upon the second builder and does not become a "lien" or charge upon the land. For this reason the original builder should insist on payment being made prior to the actual use of the wall by his neighbor. If the neighbor refuses to do this, then the original builder may go into court, and by appropriate action, restrain the adjoining owner from using the wall until compensation is made.

## Chapter XIX

### MECHANIC'S LIENS

**Meaning of Term.** A "mechanic's lien" is a special claim on buildings and other improvements upon real estate, and also on the land itself, in favor of certain classes of persons who have worked upon the buildings, or furnished material for their construction. The object of the special claim is to protect those mechanics and laborers who have actually labored on the owner's work, and to secure them some redress in case their claims, which gradually accumulate from day to day, are disregarded. It is also frequently said that the principle upon which these liens or claims are allowed in favor of mechanics, laborers and material-men is, that their work and the materials which they have furnished, have made the property more valuable, and it is unfair that the owner of the land, who has directly or indirectly engaged the men to work upon it, should take the benefit of such labor without being obliged to pay for it.

Such a lien is very similar to a mortgage in

that it charges the property with a particular debt, which must be paid off before anyone can obtain a clear title to the property.

As a general rule a mechanic's lien attaches to the building and to any improvements made upon it, and also to the land built upon. The right to the claim is a very broad one, practically covering all cases in which work is done upon any form of building or excavation. Inasmuch as the lien attaches to the property in favor of every sub-contractor and material-man, who has in any way contributed to the work, it is very important that the owner should be sure to secure written releases of any possible claim of a mechanic's lien from each contractor, sub-contractor and material-man who has been engaged upon the building, before he accepts the finished work from the principal contractor and pays him for it.

**Scope of Claim.** An important Mechanic's Lien Act was passed by the Pennsylvania Legislature in 1901, and it provides that every structure, or building improvement shall be subject to a lien or special preferred claim for the payment of all debts due to the contractor, or sub-contractor (these terms include material-men) in erecting, constructing or re-

moving a building, or in adding to, altering, or repairing it. This claim also attaches to all out-houses, sidewalks, yards, fences, and walls, and to everything which has been used for fitting up or equipping the property, as, for example, grates, furnaces, boilers, engines, chandeliers, pipes, wires, and fixtures generally.

**The Filing of the Claim.** The claim of the contractor or sub-contractor must be filed in the Court of Common Pleas of the county in which the building is situated, and in the case of property which is leased to a tenant and upon which alterations have been made, the claim must be filed within three months, and in all other cases within six months. The claim must state the claimant's name, the name of the owner for whom the work was done, the name of the party with whom the claimant contracted, and exhibit a copy of the contract, if it was in writing, or give a statement of its terms and conditions, if it was verbal. There must also be added a statement of the work done or materials furnished, the amount which it is claimed is due, the property against which the claim is filed, and the date from which it is to take effect.

When the claim is duly filed the mechanic's lien comes into existence, and until it is satisfied the owner cannot remove or change the buildings or alter the premises in any way which may be detrimental to the party who has filed the claim.

**Limit of Liability.** Whenever the notice of claim is filed by a sub-contractor, or the assignee of a contractor, the owner of the property cannot of course be made liable for a greater amount than that specified or stipulated in the original contract.

**Protection of Owner.** Above all, therefore, it is essential that an owner assure himself that the men who have worked under his contractor have been properly paid before he makes his final settlement with the contractor. If he takes the pains to assure himself of this, he can hold the contractor liable for his agreements with the men under him, but if he accepts the work from the contractor as finished and pays him for it, he may afterwards discover that the latter has not lived up to his bargain with sub-contractors and material-men, and, slipping out, has left the responsibility on him, the innocent owner.

## Chapter XX

### BUILDING AND LOAN ASSOCIATIONS

**Object.** The purpose of a "building and loan association"—commonly known as a building association—is to enable persons, whose earnings are small, and who find it difficult to accumulate money because of the length of time required to save any appreciable sum, to become in a comparatively short time and by comparatively small periodical payments, the owners of homes. For example, let us suppose that a hundred men agree to form an association, each man to save and deposit with the directors five dollars from his monthly earnings. They decide that they will each continue to contribute his share on a certain day each month until the whole sum shall be sufficient to pay each member \$1000 in cash. It is evident that if all payments are regularly made, the necessary sum total will be ready for distribution at the end of two hundred months. Each month, however, the treasurer will receive

\$500 from the members' contributions, and this he will invest at a good rate of interest, and so decrease the time which it will be necessary to wait. This would also decrease the amount which each associate would have paid in at the end, so that having paid in about \$900 he will be entitled to receive \$1000.

But the association has a further object than that of a saving fund. The desire of the members is to acquire homes, and for this purpose the money which comes monthly into the treasurer's hands, is by him loaned at interest to those members who are particularly anxious to buy land at once and build thereon. As security the borrower gives a mortgage on the land purchased. In this manner the common fund of money will assist the borrowing member, and he, in paying his interest on the money loaned to him will in fact be paying it partly to himself, and will thus himself assist in hastening the day when he shall be entitled to participate with the others in the distribution of the common fund. In this way the member will probably obtain his home a number of years before his monthly payments of five dollars could be expected to amount to a sum large enough to pay for it, and yet those small monthly payments, regularly kept up, will in

time equal the sum he borrowed. He will thus have secured his home, paying for it practically in monthly instalments of five dollars, and the interest on what he had borrowed, and without having paid rent in the meantime.

**Manner of Accumulation.** This easy and profitable method of obtaining a home has usually been found so popular with the members of the building associations that there are apt to be a number of members eager to borrow whenever there is a sum ready for investment. In such cases, the loan is ordinarily put up at a form of auction, at which the members who are anxious to borrow bid for the privilege, agreeing that they will receive the sum offered, less the amount bid by them. This difference, or the borrowing member's bid, is called the premium or bonus, which the borrower undertakes to pay, together with the amount of the loan which he actually receives, the two constituting his whole debt, which is to be discharged in the same manner and at the same time. It is a fixed rule with these associations that a member's indebtedness by loan shall not exceed the paid-up value of the number of shares he holds in the society. It will thus be seen that two sources of profit are continually

open to members of such associations, interest on loans to the members, and premiums for the preference in taking the loans. The accumulation of the fund which is ultimately to be distributed is, therefore, in most instances comparatively rapid.

**Fines.** Frequently, however, members are negligent in paying their monthly instalments, or find that they have not the necessary money on hand. In such cases, the machinery of the association is of course seriously clogged, and in order to make up for this temporary loss, a fine is imposed upon those members who have failed to pay their instalments, the fine amounting to a little more than the possible profit which might have been made upon the unpaid instalment.

If a member should continue to default in paying his instalment the society has the right to make him forfeit his interest and membership.

**Withdrawal.** Sometimes, on the other hand, a member is unable to pay the instalments through no fault of his own. In such a case, it would be unfair that he should lose all he has already put in, and yet his inability to pay must seriously cripple the association. To

meet this contingency, it is customary for the association to provide among its organic laws that a member desiring to withdraw may receive from the society, upon proper notice given of his intention, a sum equal to the amount he has paid in, with, in addition, a certain percentage representing his proportion of the business profits. He then returns his share in the associated stock to the society, which may, if its business and legal powers warrant, reissue the stock by taking in a new member, who will, upon making sufficient back payments to place him on an equal footing, share in the association benefits.

**Distribution of Fund.** At last the time comes when it is found that the money on hand and the securities which represent money, are sufficient, after settling all expenses, to cancel the obligations of members to the association, and to distribute to those associates who have received no loans the full value of the shares,—that is, in the case taken, to pay each member who has borrowed nothing his \$1000, and to surrender the securities given by those who have realized on their shares. The association is then in business parlance “wound up,” which means that it ceases to receive the

monthly deposits, interest on the members' obligations to the society ceases to accrue, lands owned by the society are sold off, debts paid, outstanding obligations collected, and the fund finally remaining divided among the members entitled to share therein.

The name "building association" is not the only one given to societies of this character, but it is the one most generally employed in the United States.

**Varieties of Associations.** These organizations considered in regard to their plans of issuing stock are known as terminating, serial or permanent associations. The "terminating society" is the simplest form, it being the one in which all the shares mature at the same time, at which time the association comes to an end.

A "serial association" is one in which the shares are divided into series, each series being issued separately to its members, and maturing separately, the intervals between the issuing of each series being determined by the amount of money still on hand or by the rules of the society.

A "permanent association" is one which issues stock at any time when application is made for it. In such associations the new

member does not pay back instalments, but may join at any time, receiving consideration in the fund from the date of his membership.

These societies ordinarily elect officers from among their members, and such officers have a general supervision over the society's business; there are also often trustees appointed in whom the legal title to the association property is vested.

In general building associations are conducted in the same manner and are liable to the same laws as are ordinary commercial bodies or corporations formed for transacting any general business.

## Chapter XXI

### MARRIAGES

**The License.** In Pennsylvania persons desiring to marry must obtain a marriage license from the Clerk of the Orphans' Court of the county in which either one of the parties lives, or of the county in which the marriage is to be performed. (In Philadelphia the office of the Clerk is room 413, City Hall.) One or both of the applicants must be identified to the satisfaction of the Clerk, and a duplicate copy of the license filled in by the person solemnizing the marriage must after the marriage be filed with the Clerk. A license, when issued, authorizes any minister of the gospel, justice of the peace, or other proper officer to solemnize the marriage ceremony in any county of the state. The person solemnizing the marriage must certify that he has done so, and this certificate must be filed with the duplicate copy of the license in the Clerk's office. The fee for the license is fifty cents.

Before issuing the license the Clerk of the Orphans' Court should require the applicants to answer certain questions, and assure himself that there is no legal reason why the marriage should not take place.

If either party intending to marry is under twenty-one years of age, the consent of the parents or guardians must be personally given before the Clerk, or certified to by the parent or guardian before two witnesses, and legally acknowledged as the act of the parent or guardian.

A special form of license is issued in the case of marriages performed by Friends' ceremony.

**Prohibited Marriages.** Under the laws of the State marriages between close blood relations are prohibited. These prohibitions according to the terms of the statute, are as follows:

A man may not marry his mother, his father's sister, his mother's sister, his own sister, his daughter, or the daughter of his son or daughter.

A woman may not marry her father, her father's brother, her mother's brother, her own brother, her son, or the son of her son or daughter.

Nor may any persons of the kin of the degree of first cousins marry each other.

The statutes also state that one may not marry certain persons connected by marriage. Such prohibitions are:

A man may not marry his father's wife, his son's wife, his son's daughter, his wife's daughter, or the daughter of his wife's son or daughter.

A woman may not marry her mother's husband, her daughter's husband, her husband's son, or the son of her husband's son or daughter.

## Chapter XXII

### MARRIED WOMEN'S RIGHTS

**Rights in Regard to Property.** Married women may hold property separately from their husbands and have in many respects as free control over it as unmarried women; and such property will not be liable for their husband's debts. Moreover, the wife may apply for the appointment of a trustee for her estate without the approval or consent of her husband.

Where a deed or mortgage calls for the conveyance of property belonging wholly or in part to a married woman, she should make a separate acknowledgment of the deed or mortgage, setting forth that it is entirely her own act and is done of her own free will. But she may not convey nor mortgage her real property unless her husband joins her in the conveyance or mortgage.

Married women may dispose of their property by will as if unmarried.

Married women owning shares of stock, or holding corporate loans, may freely transfer such shares and loans. They may sell, transfer, assign or satisfy any judgment or mortgage which may be standing in their names.

**Business Rights.** A married woman may, as well as though she were unmarried, make any contract for her own benefit, but she may not become the indorser of a bill or note for another, nor a guarantor nor a surety. A husband is not liable for any of his wife's debts which she may have contracted before her marriage to him. When a wife acting for herself, and not as her husband's agent, enters into a contract, she alone is responsible on that contract. A wife has, however, implied authority to contract for necessities as the agent of her husband, and for such debts he is responsible.

A wife may loan money to, and take securities from, her husband, as though she were unmarried. She may also keep a separate bank account from her husband in her own name, and will be protected in the security of her own separate earnings.

Married women may be appointed and act as corporators or officers of all associations

whose purpose is learning, benevolence, charity or religion.

**A Widow's Rights in the Estate of Her Deceased Husband.** Whenever a man dies leaving a wife the latter has certain definite rights in her husband's estate. If he left a will she may accept the provision which he made for her under its terms; if she is not satisfied with this she may take "against the will." If she decides to do this, she may, if she has no children or issue, take one-half of his personal property outright, and one half of his real estate for her use during her life. If, on the other hand, there are children or issue then she may take only one-third of his personal property outright, and only one-third of his real estate for her life, and the children are entitled to the balance. In addition to all the above rights the wife is entitled to her widow's "exemption." This means that she is entitled to three hundred dollars in either real or personal property of her husband for the use of herself and children.

**Right to Trade Alone.** Whenever a husband through his own fault, as by drunkenness, desertion, profligacy, or any such cause, neglects to provide for his wife, the latter may

hold her property entirely in her own charge, and may trade, deal, or do business with any third parties exactly as though she were unmarried, and may also assume entire charge of the children of the marriage, and in such case the husband loses absolutely all his claim to, or interest in, any part of his wife's property.

## Chapter XXIII

### DOGS

**Dogs as Property.** Dogs have not always been regarded as property, and in early days if a dog were taken from its master, the latter could not recover the dog, because he had no right of ownership, and the taking of the dog was not regarded as a theft.

To-day, however, dogs are regarded as personal property, and one stealing a dog may be convicted of larceny.

**Registration.** To obtain the benefit of his ownership, the master must register his dog with the clerk of the Court of Quarter Sessions, and in this registration must describe the dog, giving the name, age, color, height, and such marks as he may be able to give in order to distinguish that particular dog from others. The clerk records the description in his books, and furnishes the owner with a certified copy of the record. The fee for this registration is one dollar.

When the owner of a registered dog transfers the dog to some one else, he should transfer the certificate of registry also and the new owner should take the certificate to the clerk of the Court of Quarter Sessions, who will note the transfer in his books. For this transfer the clerk is entitled to twelve and a half cents. All dogs so registered become personal property.

**Tax on Dogs.** The tax collectors of Philadelphia, and of Bucks, Chester, Montgomery, and Delaware Counties, are obliged by law to keep a list of all dogs over one month old owned by citizens, and are required to collect a tax of twenty-five cents a year from every person owning one dog, and for every second dog kept about the house one dollar; and for every additional dog two dollars. In the country this money goes to a fund for repaying the owners of sheep, which have been destroyed by dogs, the value of their sheep; in the city the money so collected goes to a fund for the support of the poor.

If a dog is kept in, or stays about a house, the person living in the house is considered to be the legal owner of the dog, and may be taxed for the dog. If the owner sends a dog

from house to house in order to escape paying the tax, he will be liable to pay a double tax; and all dogs which are not listed as the property of some one, are deemed to have no owner, and may be lawfully killed by any one seeing them run at large.<sup>1</sup>

The owners of dogs are liable for all injuries done by their dogs.

**Mad Dogs.** Any person may make complaint under oath to any magistrate or justice of the peace that a certain dog is mad, or has been bitten by, or been fighting with a dog that is mad; and the magistrate or justice must then summon the dog's owner to appear before him. If the official decides on hearing both the complainant and the owner that the dog is mad, he must order that the dog be killed, and if the owner refuse or neglect to see that the order is carried out at once, the magistrate or justice should appoint some officer to carry out the order for him.

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<sup>1</sup> **Homeless Animals.**—In the City of Philadelphia all homeless animals, such as cats and dogs, as well as all animals of which the owners desire to be rid, should be sent to the Morris Refuge Association, a charitable institution at 1242 Lombard Street, where they will be either properly and kindly cared for or painlessly killed.

## Chapter XXIV

### GAME LAWS

Hunting on Sunday is forbidden in all parts of this State. No person in Pennsylvania may at any time lawfully kill, wound or catch any song bird, or any warbler, linnet, titmouse, blue bird, sparrow, yellow bird, thrush, woodpecker, catbird, pewee, vireo, martin, tanager, tiltup, finch, indigo bird, oriole, shrike, kildeer, gnatcatcher, snow bird, hair bird, grosbeak, whip-poor-will, cuckoo, chewink, chickadee, chat, phoebe bird, redstart, humming bird, cow bird, lark, wren, swallow, robin, grackle, nut-hatch, bittern, swift, nighthawk, starling or bunting. But song birds may be kept in cages as domestic pets. No person may destroy the nest or eggs of any sort of wild birds, but certain persons may obtain special certificates from the Board of Game Commissioners, granting them the right to take birds, their nests and eggs for purposes of scientific study. English sparrows, hawks, owls, kingfishers, herons and crows may be caught or killed at any time.

No one may catch, take or kill wild turkey, pheasant, grouse, quail, partridge, woodcock, or prairie chicken except between October 15th and December 15th inclusive. Woodcock may also be killed in July.

Elk or deer may only be caught or killed during November, but may not even then be killed or captured if found in the waters of any of the streams, ponds or lakes within the State, and no dogs may be used in hunting them.

Rabbits may only be caught or killed from November 1st to December 15th inclusive, and squirrels only from October 15th to December 15th inclusive. The owners of enclosed premises may, however, kill rabbits thereon at any time of the year.

It is unlawful to capture or kill a beaver at any time of the year within the State.

One person may not kill in any one day more than ten ruffed grouse, or pheasants, or more than fifteen quail or Virginia partridge, or more than ten woodcock, or more than two wild turkeys, or in any one season more than one deer.

No game may be killed for the purpose of sale, nor may game caught or killed within the State be carried or shipped beyond the State borders.

Any non-resident of the State, unless he owns real estate within the State, must take out a license from the county treasurer of the county where he proposes to shoot before he begins hunting. The fee for this license is ten dollars.

The Commonwealth encourages the destruction of certain animals on account of the damage they do to agriculture and in order to protect game, and has placed the following bounties on each such animal killed, namely, for every wild-cat, two dollars; for every fox, red or gray, one dollar, and for every mink, fifty cents.

### **Fish Laws**

Trout, with the exception of lake trout, may only be caught in Pennsylvania from April 15th to July 31st; and bass, pike, jack salmon, pickerel, sun fish or muscallonge from June 15th to February 15th. Game fish may only be fished for with rod, hook and line, or with a hand line having not more than three hooks.

## Chapter XXV

### TAXATION

Under this heading only a very brief sketch will be given of the taxation system of Pennsylvania. This will, it is believed, be sufficient to enable the citizen to ascertain with but little trouble the amount of the taxes due by him each year.

#### Taxes Collected by the State

**Taxes on Corporate Stock.** Except banks, savings institutions and foreign insurance companies practically all corporations having capital stock, joint stock associations and limited partnerships organized under the laws of this State, or similar foreign corporations doing business within this State, must pay to the Commonwealth an annual tax at the rate of "five mills upon each dollar of the actual value of its whole capital stock." An important exception to this requirement is to be found in the case of all manufacturing corporations

which are, except when engaged in the brewing and distilling of liquors, or except when possessed of the right of eminent domain, exempt from this tax as far as their capital stock represents investments in the manufacturing plant.

**Tax on Corporate Bonds.** Every resident of Pennsylvania who is an owner of public bonds, except those issued by the State or by the United States, is required to pay a tax to the State of four mills on each dollar of their nominal value. This tax is, however, paid by the Treasurer of the County, municipality or borough which issued the bonds.

The bonds of all other corporations, as well as of limited partnerships, banks and joint stock companies, are also subject to the payment of a similar tax of four mills on each dollar of their nominal value, but this tax is paid by the treasurer of each Pennsylvania corporation. The private citizen need not concern himself with the payment of any tax on his stocks and bonds of any Pennsylvania corporations, as the corporations are, by law, made responsible for the proper payment of such taxes.

**Tax on Gross Receipts.** Certain corporations, such as railroads, pipe-lines, steamboat

and canal companies are required to pay a tax of eight mills on the dollar on that portion of their gross earnings which results from business done wholly within the State. Notaries public are required to pay a similar tax, and bankers, brokers, etc., are required to pay taxes on their net earnings.

### **Taxes Collected by the Counties for the State**

**On Personal Property.** Throughout the State the County officials collect the State tax on personal property and transmit the proceeds to the State Treasurer. The tax is at the rate of four mills on each dollar of the following forms of personal property; all mortgages; all moneys owing by solvent debtors whether evidenced by promissory notes, judgments or other ways; all articles of agreement and accounts bearing interest; all loans (represented by bonds or other evidence of indebtedness) or shares of stock in any bank, corporation, association, company or limited partnership (except those created by the State of Pennsylvania, on which the tax is collected by the State); all moneys loaned or invested in other states, territories, the District of Columbia or foreign countries, and all other moneyed

capital in the hands of individual citizens of the State.

**Method of Making Returns.** The tax assessors are required to furnish each taxable person, firm or corporation, a blank form of return which must be properly filled out by answering the questions relating to the amount of property possessed of the above enumerated kinds which is held by the citizen. This return must be presented to the tax assessors (office in Philadelphia in the City Hall, First Floor, West Corridor) who will administer the necessary oath or affirmation without charge. If, however, the tax payer desires to avoid the trouble of a visit to the City Hall he may swear to his return before any notary public or other person competent to administer oaths and forward it by mail to the tax assessors.

**Penalty for Neglect or Refusal to Make Returns.** If any person neglects to make the return of taxable property above described then the assessors make an investigation and decide upon the amount of the property the tax payer probably possesses. To this amount is added one-half and the tax is then assessed on the total amount thus obtained, provided, however, that the tax payer may within a proper

time appeal from the amount fixed by the assessors.

**Tax on Vehicles for Hire and on Annuities.**

Each County is also required to annually collect for the State a tax of four mills on each dollar of the value of every stage, hack, omnibus or other vehicle for hire except street cars, and upon all annuities of over two hundred dollars.

**Share of the County.** To pay the expenses of the collection the County is permitted to retain one-fourth of the above mentioned personal property taxes.

**Local Taxation**

**Cities.** The Select and Common Councils of the City of Philadelphia have the power to levy a tax for municipal purposes upon all real estate (which includes the buildings erected thereon) as well as upon certain personal property such as horses and cattle. The Councils are required to fix the rate for each year on or before the second stated meeting in December of the previous year.

The value of all real estate is assessed by the local assessors, but the tax payer

may appeal from their decision. Bills for taxes on real estate may be procured at the office of the Receiver of Taxes in the City Hall. A discount, the amount of which varies according to the date of settlement, is allowed if the taxes are paid promptly, and an increasing penalty added for delays in payment beyond the first day of September for any year. In other cities similar taxation systems exist.

**In Other Counties.** Similar taxes on real estate and animals exist in the various counties. The rate is not the same in different counties and varies from year to year. The bill for county taxes may be secured by application in person or by mail to the County Treasurer. In the country districts there are also separate township taxes, assessed on real estate, for roads, the support of the poor, schools, and similar purposes.

The valuation of the real estate for all these local purposes is made triennially by the local assessors in each township or similar division. The County Commissioners act as a Board of Revision of Taxes to which property owners who are dissatisfied with the amount of their assessments may appeal.

**In Boroughs.** In boroughs the burgess and town council have power to levy taxes similar to those in the cities.

**Collateral Inheritance Tax.** Practically all legacies and bequests of a deceased person who was a resident of Pennsylvania or whose property lay within the State, other than to his father, mother, husband, wife, children and lineal descendants, or to the wife or widow of the son of the deceased person, are subject to a tax of five per cent. of their clear value. This tax is payable to the State. This tax must be paid by the executors or other representatives of the decedent before the bequests or legacies are paid.

**Exemption from Taxation.** All churches, meeting houses, or other regular places of stated worship, with the grounds thereto annexed necessary for the occupancy and enjoyment of the same, all burial grounds not held or used for private or corporate profit, all hospitals, universities, colleges, seminaries, academies, associations and institutions of learning, benevolence or purely public charity are exempt from general taxation.

**Other Taxes.** In addition to the above taxes there are certain others which apply to special trades or occupations. Thus vendors of merchandise and liquor dealers are required to take out licenses on which a payment is demanded by the government authorities. There are also special taxes on banks, express companies, and insurance companies. In the City of Philadelphia, as well as in other cities, there is also an annual tax on the users of water.

## Chapter XXVI

### JURY DUTY

**Selection of Jurors.** Any citizen may legally be summoned to serve on a grand or petit jury of the county or United States courts. The names of all taxable persons residing within the city, are submitted by the Receiver of Taxes to the Board of Judges, who select from the list a sufficient number of "sober, healthy and discreet" citizens to serve on the juries for the ensuing year. Three weeks before the commencement of each term of court, a certain number of the before-selected names are drawn from the jury-wheel, and notice is served on each man so drawn at least ten days before the time fixed for his appearance. No one who has served as a juror for one full term may be drawn for the succeeding year.

**Service.** No one so summoned as a juror can be excused from serving, except by appearing in court and giving a satisfactory excuse to the judge. If any one so summoned is not

excused, and fails to appear, he is liable to a fine of not less than thirty nor more than two hundred dollars.

**Exemption.** If a citizen wishes to be exempted from serving as a juror, he should file an affidavit, giving the reason for his exemption, with the clerk of the board for selecting jurors, prior to the first day of July in the year next preceding that for which he wishes to claim exemption. If the reason is sufficient, the board will allow the exemption.

**Payment.** Jurors receive two dollars and fifty cents for each day's attendance at court, and mileage at the rate of six and one-quarter cents per mile circular in going to and returning from the court.

Witnesses receive one dollar and fifty cents for each day's attendance, and the same rate of mileage as jurors.

## Chapter XXVII

### ARREST

**The Right to Make an Arrest.** Upon the commission of certain serious crimes such as murder, manslaughter, rape, burglary or robbery any person making immediate pursuit on reliable information may arrest the criminal without a warrant. But if he has not seen the crime committed, but merely believes it to have been perpetrated, the informer should swear out a warrant before having the person he believes to be guilty arrested, and he should use the utmost care to ascertain the real facts, inasmuch as in case he starts a prosecution without a good and reasonable cause the prosecutor may later be sued for damages by the person whose arrest he has brought about. Mere suspicion is never enough evidence on which to arrest.

Police officers may arrest without a warrant "on view," by which is meant that they may arrest persons who violate the law

in their actual presence, and they may also arrest persons to prevent a breach of the peace.

Where a person is on a public street, behaving in a disorderly manner, which causes a crowd to congregate, and is ordered by a police officer to withdraw, and the warning is ineffectual, and the person so warned uses defiant, abusive language, he may be arrested by the officer without a warrant.

Where a person is openly and notoriously engaged in violating the law, it is sufficient for an officer who attempts to arrest the offender, to announce his official position and demand a surrender; if this is refused, the officer is not guilty of an assault and battery upon the prisoner because he uses enough force to secure him.

If a police officer, attempting to arrest a person for a breach of the peace, calls to his aid a bystander, the latter is bound to go to the assistance of the officer, and is not liable in an action of trespass if he uses no more force than is necessary to arrest the prisoner.

Nothing but the actual commission of a serious crime will excuse a police officer who shoots a person upon the suspicion that he has committed such a crime.

A citizen is not bound to submit to an illegal arrest, and may use force enough to resist it.

**Procedure in Criminal Cases.** A criminal prosecution is begun in most cases by the aggrieved person, technically known as the "prosecutor," appearing before a magistrate or justice of the peace and making affidavit that a particular offence has been committed. The magistrate then issues a warrant for the arrest of the person accused, or "defendant." A time is set for a hearing at which the aggrieved person testifies as to the cause of arrest. The magistrate may then, if he thinks there is no evidence of a criminal offence having been committed, discharge the defendant, or if he is of the opinion that some wrong has been done, may commit the defendant to jail or bind him over under bail to await the next session of the grand jury. The defendant is then "indicted" by the grand jury, and held for trial by a petit jury (i. e., a jury of twelve men to try causes) in the criminal courts, or he is discharged. After indictment the District Attorney and his assistants have charge of the case, but before that the prosecutor must handle it himself.

**Bail.** Bail is allowed in all cases of arrest except those in which the offence charged is of

a capital nature. The amount of bail is fixed by the officer before whom the accused person is brought, and the bond itself must be signed by a citizen holding unencumbered real estate within the jurisdiction to the value of the bond. The condition of the bond is that the accused will appear in court for trial whenever wanted, or that the surety will forfeit the amount of his bond.

## Chapter XXVIII

### HEALTH AND SANITARY REGULATIONS

**Powers of the Board of Health.** The Board of Health in Philadelphia has charge of all matters which pertain to the public health and physical welfare. The purposes of the Board are many, but the main ones are:— to prevent the spread of contagious diseases, to remove or abate nuisances, and to keep a registry of all the marriages, births and deaths in the city. These will now be described in turn.

#### To Prevent Disease

**Contagious Diseases.** To prevent disease the Board can prohibit all communication with infected houses and families except by means of physicians, nurses and the necessary messengers. Infected houses may be placed in the special charge of a quarantine officer or medical inspector. Persons afflicted with pestilen-

tial or contagious diseases, if they cannot be properly attended at home, may, upon the advice or order of a physician authorized by the Board, be removed to the Municipal Hospital. The Legislature has declared pestilential and contagious diseases to be Asiatic cholera, relapsing fever, yellow fever, scarlet fever, or membranous croup, typhus or ship fever, epidemic cerebro-spinal meningitis or spotted fever, smallpox and varioloid, typhoid or enteric fever, or any other disease which may at any time assume, either generally or in some particular locality, a pestilential character. The boarding expenses of poor patients at the Municipal Hospital are paid out of the regular appropriation made for the purpose to the Board of Health. A physician who has under his charge a patient afflicted with any of the before mentioned contagious diseases, must report the case to the Health Department, or be subject to a fine not exceeding one hundred dollars for his neglect.

**Quarantine.** In order to prevent the introduction of contagious diseases from abroad, a vessel arriving from a foreign port between June 1st and October 1st is required, under penalty of a fine of five hundred dollars, to

anchor in the Delaware River near the quarantine station and submit to an examination by the quarantine inspector. Any person on board who is afflicted with a contagious disease is removed and cared for in the quarantine hospital. Between October 1st and June 1st vessels are examined by the port physician upon their arrival at Philadelphia.

**Vaccination.** The Board of Health may at any time when it regards such a step necessary in order to prevent the spread of smallpox, order that all persons in the city be vaccinated, and appoint physicians for each ward to see that the order is obeyed. All persons who refuse or neglect to obey such an order are under the terms of the statute liable to a fine of not less than five dollars nor more than twenty-five dollars. All persons who are unable to pay the expense of vaccination, may be vaccinated at the expense of the city. Children who have not been vaccinated, are refused admission to school by order of the Board of Health.

**Food Inspection.** So far as is possible a strict inspection of all meat and milk, which comes into the city, is made by Health officers, but, although it is well known that the germs

of disease are very frequently carried both in meat and milk, a thorough inspection is at present impracticable in a large city. With regard to the inspection of milk the most that can in any effective degree be done is to prevent its adulteration and dilution.

**Placarding Premises.** Whenever a case of cholera, smallpox, scarlet fever, relapsing fever, diphtheria, diphtheritic croup, membranous croup or leprosy is reported to the Board of Health, they may at once place a conspicuous sign upon the house in which is the patient, warning persons of the danger of contagion. The children who live in the house with the sick person must not attend school during the illness of the sick person, nor until the premises have been thoroughly disinfected. Persons who are ill with one of the above named diseases must not be carried from one place to another in public conveyances, nor in any way by which the health of other persons might be affected.

### **To Prevent Nuisances**

**Nuisances.** The Board of Health is charged with the prevention of all unsanitary conditions, and the regulation of such necessary details of city life as the removal of ashes and

refuse, the cleaning of streets, the construction of house drains, waste and soil pipes, and sewers.

**Complaints.** Whenever a householder has a complaint to make regarding a nuisance prejudicial to the public health caused by a neighbor's neglect, he should either write to the Board of Health, or go to the Board's rooms in the City Hall. The complaint is then referred to an inspector, whose duty it is to visit the premises complained of, make a careful examination of them, and if he considers the complaint well founded, to notify the offending party that the nuisance, drain, pipe, furnace, or whatever the cause may be, must be remedied within five days. In certain cases, in which immediate repair is necessary, a "forthwith" order is given, which directs that the nuisance be corrected within the following forty-eight hours. If the order is not obeyed, the Board will itself remedy the nuisance, and charge the cost of so doing to the householder, with a fine of from five to fifty dollars for this violation of the law.

In general it may be said that anything which seriously offends the senses or disturbs the comfort or health of a number of people

will be a public nuisance. Thus, the pollution of a river, the water of which is generally used for drinking or washing purposes, the allowing pools of stagnant water to collect on one's premises and render the air foul, or the collection of refuse or ashes to the discomfort of the neighbors, are all instances of legal nuisances. It is always the nuisance which may be prejudicial to the public health of which the Board of Health takes cognizance. The common nuisance, as interpreted by law, can be settled in the courts, without coming before the Board.

**Removal of Refuse.** The Board of Health is required to notify all householders that a scavenger will call for all refuse or garbage at certain times named in the notice, and to direct that all householders have such refuse ready in prescribed vessels when he calls, subject to a penalty of five dollars for each day the refuse is allowed to remain on the premises after the scavenger has called.

The collection of ashes and garbage is attended to by the Department of Public Works. Complaints as to unsatisfactory service should, however, be made to the Board of Health. The inspection of all house drainage is also directly under the charge of the Board.

**To Register All Marriages, Births and Deaths  
Within the City**

The Board of Health requires that all persons, such as clergymen, magistrates, and others who may perform the marriage ceremony, shall report all marriages performed by them every three months. Reports of births are required from physicians and midwives, and reports of deaths from physicians, coroners and health officers. The failure to make a complete and correct return makes an offender liable to a fine not exceeding fifty dollars.

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